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[New Hampshire Code of Administrative Rules](#)
[Wt 100-800](#)

TABLE OF CONTENTS

CHAPTER Wt 100 ORGANIZATIONAL RULES

PART Wt 101 DEFINITIONS

- Section Wt 101.01 Abandonment
- Section Wt 101.02 Abutter
- Section Wt 101.03 Accessory Docking Structure
- Section Wt 101.04 Activity Sponsor
- Section Wt 101.05 Applicant
- Section Wt 101.06 Bank
- Section Wt 101.07 Beach
- Section Wt 101.08 Boathouse
- Section Wt 101.09 Boatslip
- Section Wt 101.10 Bog
- Section Wt 101.11 Breakwater
- Section Wt 101.12 Bulkhead
- Section Wt 101.13 Bureau
- Section Wt 101.14 Canopy
- Section Wt 101.15 Commercial Use of Structures
- Section Wt 101.16 Commissioner
- Section Wt 101.17 Compensatory Mitigation
- Section Wt 101.18 Conservation Area
- Section Wt 101.19 Conservation Commission
- Section Wt 101.20 Continued Agricultural Use
- Section Wt 101.21 Corduroy Road
- Section Wt 101.22 Council
- Section Wt 101.23 Cribs
- Section Wt 101.24 Cropland
- Section Wt 101.25 Department
- Section Wt 101.26 Developed Upland
- Section Wt 101.27 Director
- Section Wt 101.28 Dock
- Section Wt 101.29 Dock
- Section Wt 101.30 Dolphin
- Section Wt 101.31 Drainage Swale
- Section Wt 101.32 Dredge
- Section Wt 101.33 Dredge Spoils
- Section Wt 101.34 Dune
- Section Wt 101.35 Dune Vegetation
- Section Wt 101.36 Erosion Control
- Section Wt 101.37 Excavate
- Section Wt 101.38 Fetch
- Section Wt 101.39 Fill
- Section Wt 101.40 Fill
- Section Wt 101.41 Flats
- Section Wt 101.42 Float
- Section Wt 101.43 Functional Assessment
- Section Wt 101.44 Grandfathered Status
- Section Wt 101.45 Highest Observable Tideline
- Section Wt 101.46 Hydric Soil
- Section Wt 101.47 Hydrophyte

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Section Wt 101.48 Intermittent Stream
Section Wt 101.49 Jetty
Section Wt 101.50 Jurisdiction
Section Wt 101.51 Jurisdictional Area
Section Wt 101.52 Maintenance of Structures
Section Wt 101.53 Major Docking System
Section Wt 101.54 Major Project
Section Wt 101.55 Marina
Section Wt 101.56 Marsh
Section Wt 101.57 Minimum Impact Project
Section Wt 101.58 Minor Project
Section Wt 101.59 Mooring
Section Wt 101.60 Navigable Frontage
Section Wt 101.61 Nontidal Wetland
Section Wt 101.62 Normal High Water
Section Wt 101.63 Open Pile Construction
Section Wt 101.64 Pasture
Section Wt 101.65 Permanent Dock
Section Wt 101.66 Permit Action
Section Wt 101.67 Pier
Section Wt 101.68 Pile
Section Wt 101.69 Practicable
Section Wt 101.70 Preservation
Section Wt 101.71 Public Hearing
Section Wt 101.72 Repair
Section Wt 101.73 Replacement
Section Wt 101.74 Retaining Wall
Section Wt 101.75 Revetment
Section Wt 101.76 Rip-rap
Section Wt 101.77 Roadway
Section Wt 101.78 Rocker Box
Section Wt 101.79 Seasonal Dock or Seasonal Structure
Section Wt 101.80 Sedimentation Controls
Section Wt 101.81 Shoal
Section Wt 101.82 Shoreline Frontage
Section Wt 101.83 Significant Environmental Impact
Section Wt 101.84 Siltation Curtain
Section Wt 101.85 Sluice
Section Wt 101.86 Structure
Section Wt 101.87 Substantial Public Interest
Section Wt 101.88 Surface Water Body or Surface Waters
Section Wt 101.89 Swamp
Section Wt 101.90 Tidal Buffer Zone
Section Wt 101.91 Tidal Flat
Section Wt 101.92 Tidal Flushing
Section Wt 101.93 Tidal Wetland
Section Wt 101.94 Unnecessary Hardship
Section Wt 101.95 Upland
Section Wt 101.96 Upland Buffer
Section Wt 101.97 Watershed
Section Wt 101.98 Weephole

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Wt 101.99 Wetland
- Section Wt 101.100 Wetland Creation
- Section Wt 101.101 Wetland Recreation
- Section Wt 101.102 Wet Meadow
- Section Wt 101.103 Wharf

PART Wt 102 STATEMENT OF PURPOSE AND ACCESS TO FILES

- Section Wt 102.01 Purpose
- Section Wt 102.02 Gender
- Section Wt 102.03 Access to Files

PART Wt 103 SOURCE OF AUTHORITY

- Section Wt 103.01 Statute Granting Authority

CHAPTER Wt 200 RULES OF PRACTICE AND PROCEDURE

PART Wt 201 SCOPE; TYPES OF HEARINGS

- Section Wt 201.01 Scope
- Section Wt 201.02 Types of Hearings and Procedures

PART Wt 202 PERMIT ACTION

- Section Wt 202.01 Application Hearings Required
- Section Wt 202.02 RESERVED
- Section Wt 202.03 Minimum Impact Projects

PART Wt 203 RECONSIDERATION

- Section Wt 203.01 Requesting Reconsideration
- Section Wt 203.02 Hearings on Reconsideration

PART Wt 204 VIOLATIONS

- Section Wt 204.01 Notice
- Section Wt 204.02 RESERVED
- Section Wt 204.03 Field Inspections
- Section Wt 204.04 Irreversible Unauthorized Projects
- Section Wt 204.05 Suspension, Revocation, or Modification of Permits
- Section Wt 204.06 After-the-Fact Application

CHAPTER Wt 300 CRITERIA AND CONDITIONS

PART Wt 301 DELINEATION AND CLASSIFICATION OF WETLANDS

- Section Wt 301.01 Delineation of Wetlands Boundaries
- Section Wt 301.02 Classification of Wetland Types

PART Wt 302 CRITERIA FOR EVALUATION

- Section Wt 302.01 Statement of Purpose
- Section Wt 302.02 Board Action
- Section Wt 302.03 Avoidance, Minimization, and Mitigation
- Section Wt 302.04 Requirements for Application Evaluation

PART Wt 303 CLASSIFICATION OF PROJECTS

- Section Wt 303.01 Assignment of Classification
- Section Wt 303.02 Major Projects
- Section Wt 303.03 Minor Projects
- Section Wt 303.04 Minimum Impact Projects
- Section Wt 303.05 Projects in Jurisdiction That Do Not Require a Permit

PART Wt 304 APPROVAL CONDITIONS

- Section Wt 304.01 Conditions Specified on Permit
- Section Wt 304.02 Rock Removal
- Section Wt 304.03 Timing of Projects
- Section Wt 304.04 Setback from Property Lines
- Section Wt 304.05 Logging Operations
- Section Wt 304.06 Erosion and Siltation Control Measures
- Section Wt 304.07 Culverts
- Section Wt 304.08 Beaches
- Section Wt 304.09 Subdivisions
- Section Wt 304.10 Shoreline Structures
- Section Wt 304.11 Dredging Projects
- Section Wt 304.12 Filling Projects
- Section Wt 304.13 Utility Crossings
- Section Wt 304.14 Gold Mining and Dredging
- Section Wt 304.15 Cofferdams
- Section Wt 304.16 Alternative Considerations

CHAPTER Wt 400 SHORELINE STRUCTURES

PART Wt 401 STATEMENT OF PURPOSE AND EVALUATION

- Section Wt 401.01 Purpose
- Section Wt 401.02 Evaluation

PART Wt 402 DESIGN AND CONSTRUCTION CRITERIA

- Section Wt 402.01 Configuration
- Section Wt 402.02 Dimensions
- Section Wt 402.03 Setbacks
- Section Wt 402.04 Seasonal Docks
- Section Wt 402.05 RESERVED
- Section Wt 402.06 Permanent Piers
- Section Wt 402.07 Breakwaters
- Section Wt 402.08 Canopies
- Section Wt 402.09 Structures Disallowed
- Section Wt 402.10 Stairways
- Section Wt 402.11 Maintenance
- Section Wt 402.12 REPEALED
- Section Wt 402.13 Frontage Less Than 75'
- Section Wt 402.14 Frontage Over 75'
- Section Wt 402.15 Exceptions To Frontage Criteria
- Section Wt 402.16 Commercial Use - Municipal Review
- Section Wt 402.17 Marinas - Design Standards

- Section Wt 402.18 Contiguous Frontage
- Section Wt 402.19 Ownership
- Section Wt 402.20 Deed Registration
- Section Wt 402.21 Registration
- Section Wt 402.22 Modification of Existing Structures

PART Wt 403 CRITERIA FOR INTAKE AND OUTFLOW STRUCTURES

- Section Wt 403.01 Intake Structures
- Section Wt 403.02 Outflow Structures
- Section Wt 403.03 Dikes, Tide Dams, and Tide Gates

PART Wt 404 CRITERIA FOR SHORELINE STABILIZATION

- Section Wt 404.01 Least Intrusive Method
- Section Wt 404.02 Diversion of Water
- Section Wt 404.03 Vegetative Stabilization
- Section Wt 404.04 Rip-rap
- Section Wt 404.05 Walls

CHAPTER Wt 500 PERMIT PROCEDURE

PART Wt 501 PROCEDURE TO APPLY FOR REGULAR APPLICATIONS

- Section Wt 501.01 Application Completeness Requirements
- Section Wt 501.02 Additional Data
- Section Wt 501.03 Identification of Applications

PART Wt 502 GENERAL CONDITIONS APPLICABLE TO ALL PERMITS

- Section Wt 502.01 Duration of Permit
- Section Wt 502.02 RESERVED
- Section Wt 502.03 Transferability
- Section Wt 502.04 Filing Certificate of Compliance
- Section Wt 502.05 Repair or Rebuilding Structures
- Section Wt 502.06 Permit Acceptance

PART Wt 503 EMERGENCY PROCEDURES

- Section Wt 503.01 Emergency Approvals
- Section Wt 503.02 Action After Emergency

PART Wt 504 SMALL MOTOR DREDGING PERMITS

- Section Wt 504.01 Persons Requiring a Permit
- Section Wt 504.02 Application Requirements
- Section Wt 504.03 Conservation Commission Review
- Section Wt 504.04 Dredging Criteria

PART Wt 505 EXPEDITED MINIMUM IMPACT PERMITS

- Section Wt 505.01 Application Completeness Requirements
- Section Wt 505.02 Expedited Review Procedures
- Section Wt 505.03 Expedited Permit Conditions
- Section Wt 505.04 Expedited Repair Contingency

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Wt 506 PERMIT BY NOTIFICATION

Section Wt 506.01 Projects Qualifying for Permit by Notification

Section Wt 506.02 Permit by Notification Procedures for Qualifying Projects

Section Wt 506.03 Notification Completeness Requirements for Projects Qualifying for Permit by Notification in Wt 506.01

Section Wt 506.04 Conditions for Permit by Notification for Qualifying Projects

PART Wt 507 SEASONAL DOCK NOTIFICATION

Section Wt 507.01 Qualification for Seasonal Dock Notification

Section Wt 507.02 Notification Procedures for Qualifying Seasonal Dock Projects

Section Wt 507.03 Notification Completeness Requirements for Qualifying Seasonal Dock Projects

CHAPTER Wt 600 TIDAL WETLANDS

PART Wt 601 - REPEALED

PART Wt 602 - REPEALED

PART Wt 603 - REPEALED

PART Wt 604 - REPEALED

PART Wt 605 - REPEALED

PART Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Section Wt 606.01 REPEALED

Section Wt 606.02 Fill Criteria

Section Wt 606.03 Breakwater Criteria

Section Wt 606.04 REPEALED

Section Wt 606.05 Piers, Docks, Wharves, and Floats Criteria

Section Wt 606.06 Jetty Criteria

Section Wt 606.07 REPEALED

Section Wt 606.08 Mooring and Marina Criteria

Section Wt 606.09 Pile, Crib, and Caisson Criteria

Section Wt 606.10 REPEALED

Section Wt 606.11 REPEALED

Section Wt 606.12 Utility Line, Pole, Tower, and Antennae Criteria

Section Wt 606.13 Boardwalk Criteria

Section Wt 606.14 Trails, Roadways, Access, and Boat Ramps

Section Wt 606.15 Boathouses and Shoreline Slips

Section Wt 606.16 REPEALED

Section Wt 606.17 Part Taking Precedence

PART Wt 607 - REPEALED

CHAPTER Wt 700 PRIME WETLANDS

PART Wt 701 CRITERIA AND EVALUATION

Section Wt 701.01 Purpose

Section Wt 701.02 Identification of Wetlands for Consideration as Prime

Section Wt 701.03 Selection of Evaluation Criteria

Section Wt 701.04 Selection of Designated Prime Wetlands

PART Wt 702 SUBMISSION

- Section Wt 702.01 Report
- Section Wt 702.02 Map Format
- Section Wt 702.03 Acceptance

PART Wt 703 PERMIT PROCESS

- Section Wt 703.01 Criteria for Approval
- Section Wt 703.02 Criteria for Mitigation and Compensation
- Section Wt 703.03 Public Hearing
- Section Wt 703.04 Delineation of Prime Wetland

PART Wt 704 NOTIFICATION PERMIT ISSUANCE AND APPEAL

- Section Wt 704.01 Permit Issuance
- Section Wt 704.02 Appeal

CHAPTER Wt 800 COMPENSATORY MITIGATION

PART Wt 801 PURPOSE AND APPLICABILITY

- Section Wt 801.01 Purpose
- Section Wt 801.02 Applicability

PART Wt 802 DEFINITIONS

- Section Wt 802.01 Qualified Professional

PART Wt 803 COMPENSATORY MITIGATION REQUIREMENTS

- Section Wt 803.01 Project Considerations
- Section Wt 803.02 Assessments
- Section Wt 803.03 Compensatory Mitigation Site Location
- Section Wt 803.04 Compensation Amount
- Section Wt 803.05 Compensatory Mitigation Ratios
- Section Wt 803.06 Alternative Compensatory Mitigation Plans

PART Wt 804 UPLAND BUFFER PRESERVATION

- Section Wt 804.01 Location and Value
- Section Wt 804.02 Dimensions
- Section Wt 804.03 Incorporated Jurisdictional Areas
- Section Wt 804.04 Criteria for Evaluation of an Upland Buffer

PART Wt 805 WETLAND CREATION OR WETLAND RESTORATION

- Section Wt 805.01 Wetland Creation or Wetland Restoration
- Section Wt 805.02 Criteria for Evaluation

PART Wt 806 REQUIREMENTS UPON PERMITTING

- Section Wt 806.01 Notification of Construction Completion
- Section Wt 806.02 Implementation of Remediation Plan
- Section Wt 806.03 Notification of Recorded Conservation Easement

CHAPTER Wt 100 ORGANIZATIONAL RULES

PART Wt 101 DEFINITIONS

REVISION NOTE:

Document #5536, effective 12-23-92, made extensive changes to the wording and numbering of rules containing definitions in Part Wt 101. Document #5536 supersedes all prior filings for the sections in this part and Parts Wt 102 and Wt 103. Document #5536 contained many definitions which amended or incorporated definitions in Part Wt 601, which was subsequently repealed by Document #5551, effective 1-5-93.

The prior filings for former Part Wt 101 include the following documents:

#2271, eff 1-10-83
#2923, eff 12-10-84
#2924, eff 12-11-84
#3072, eff 7-26-85
#4039, eff 4-10-86
#4292, eff 7-13-87
#4386, eff 3-10-88
#5028, eff 12-20-90

Please note that some of the rules in former part Wt 101 had EXPIRED: between 12-11-90 and 12-20-90.

Wt 101.01 "Abandonment" means the failure, for a period of 5 years, to maintain an existing structure in a condition so that it is functional and intact.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 101.02 "Abutter" means any person who owns property immediately adjacent and contiguous to the property on which the project will take place. This does not include those properties across a public road. An abutter includes an owner of any flowage rights on or immediately adjacent to the property on which the project will take place. If the project is located on waterfront or another area which by its configuration brings non-contiguous properties into close proximity to the project, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than one quarter mile from the limits of the proposed project.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6199, eff 2-29-96; ss by #6498-A, eff 4-23-97

Wt 101.03 "Accessory docking structure" means a structure supplementary to a dock or wharf that assists in securing watercraft or protecting the dock or watercraft such as, for example, an ice cluster, piling, boat lift, or canopy.

Source. #8053, eff 2-28-04

Wt 101.04 "Activity sponsor" means an entity, including, but not limited to a NHDOT maintenance district, a municipality, or the maintenance department of a railway or private roadway, proposing routine roadway or railway maintenance activities within jurisdictional surface waters and wetlands, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance.

Source. #7855, *eff 3-21-03*

Wt 101.05 "Applicant" means any person with a property interest in the land on which the project is to be located sufficient for the applicant legally to proceed with the project, or one acting as an agent of such a person.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.06 "Bank" means the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Wt 301.01 indicates a change from wetland to upland.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6199, *eff 2-29-96*; ss by #6498-A, *eff 4-23-97*

Wt 101.07 "Beach" means a sloping shore of a surface water body consisting of sand, gravel, or cobble extending from adjacent upland/wetland to or in a surface water body.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.08 "Boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.09 "Boat slip" means a volume of water 20 feet long, 6 feet wide and 2 feet deep as measured at normal high water, and located adjacent to a structure to which a watercraft may be secured.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.10 "Bog" means a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.11 "Breakwater" means a structure extending generally perpendicular from the shore into surface waters of the state that is designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*

Wt 101.12 "Bulkhead" means a vertical retaining wall built along a waterfront to contain fill.

Source. (See Revision Note at chapter heading for Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.13 "Bureau" means the wetlands bureau within the water division of the department of environmental services.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.14 "Canopy" means a seasonal open structure with a flexible fabric roof not able to withstand the expected snow load and without side walls, which is erected to shelter watercraft during the boating season.

Source. (See Revision Note at chapter heading for Wt 101) #5536 eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 101.15 "Commercial use of structures" means use with compensation or other consideration to the owner of the structure(s). This shall include but is not limited to, the transfer, lease, sale, rent, or other temporary or permanent conveyance, of an interest in such a structure when such action(s) is not also applied to the property to which it is appurtenant.

Source. (See Revision Note at chapter heading for Wt 101) #5536 eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 101.16 "Commissioner" means the commissioner of the department of environmental services.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.17 "Compensatory mitigation" means creation of a new wetland, restoration of a wetland, or preservation of land to offset the impact of a project by replacing or partially replacing wetlands functions and values lost due to the project, or by substituting the value added to a wetland or wetland system for the functions or values lost.

Source. #8053, eff 2-28-04

Wt 101.18 "Conservation area" means an area of land protected by a conservation easement that restricts the future use of the property in perpetuity.

Source. #8053, eff 2-28-04

Wt 101.19 "Conservation commission" means a municipal body established under RSA 36-A with statutory standing before the department under RSA 482-A:11, III, which provides a local source of assistance to both the department and applicants.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.20 "Continued agricultural use" means that a wetland has been used as cropland or pasture with sufficient frequency, and sufficient recentness, that the land has not reverted to a scrub-shrub wetland, emergent marsh, or forested wetland.

Source. #5739, eff 11-23-93; ss by #6498-A, eff 4-23-97

Wt 101.21 "Corduoy road" means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 101.22 "Council" means wetlands council established by RSA 21-O:5-a.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.23 "Cribs" means an enclosure or framework of timber or prefabricated concrete which is securely fastened together and filled with stone ballast and which is typically used to support a structure in the water.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 101.24 "Cropland" means land used to produce plant species adapted for harvest, alone or in rotation with grasses and legumes, and includes areas dedicated to vegetables, grain, hay, pasture, fodder, sod, nursery stock, orchards and similar produce.

Source. #5739, eff 11-23-93; ss by #6498-A, eff 4-23-97

Wt 101.25 "Department" means the department of environmental services.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 101.26 "Developed upland" means upland areas within the tidal buffer zone where:

(a) The natural soil and vegetation characteristics over a majority of the lot have been legally altered and have not returned to a natural state; and

(b) The area contains at least 2 of the following criteria:

(1) Filled or excavated land;

- (2) Paved or graded land in use as a parking lot or a roadway;
- (3) A lot occupied by residential or commercial buildings;
- (4) A lot which is surrounded by residentially or commercially developed lots on at least 2 sides.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.27 "Director" means the director of the water division within the department.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*

Wt 101.28 "Dock" as a noun or "docking facility" means a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.29 "Dock" as a verb means to secure watercraft adjacent to a structure.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.30 "Dolphin" means a rigid permanent structure installed in a beach, bank, or the bottom of a water body, for such purposes as securing watercraft or protecting an area from ice floes. Dolphins can be constructed with piles, pile clusters, caissons, concrete pillars, or structures of a similar nature.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.31 "Drainage swale" means a shallow vegetated trough where water flows during runoff and which is insufficient to create a defined channel or to maintain wetlands vegetation.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.32 "Dredge" means to dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland, a surface water body, or other area within the department's jurisdiction.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*

Wt 101.33 "Dredge spoils" means material removed as the result of dredging.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.34 "Dune" means "sand dune" defined by RSA 482-A:2, VII.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.35 "Dune vegetation" means vegetation that is commonly found in sand dunes and includes but is not limited to:

- (a) Ammophila breviligulata (American Beach Grass);
- (b) Arenaria peploides (Seabeach Sandwort);
- (c) Artemesia stellarina (Dusty Miller);
- (d) Euphorbia polygonifolia (Seaside Spurge);
- (e) Hudsonia tomentosa (Beach Heather);
- (f) Hudsonia ericoides (Beach Heather);
- (g) Lathyrus japonica (Beach Pea);
- (h) Myrica pennsylvanica (Bayberry);
- (i) Prunus maritima (Beach Plum); and
- (j) Rosa rugosa (Salt Spray Rose).

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.36 "Erosion control" means the utilization of methods to contain soil particles and to prevent them from being displaced or washed down slopes by rainfall or run-off and include, but are not limited to:

- (a) Seeding;
- (b) Mulching; or
- (c) Using haybales, siltation fences, or impermeable material.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.37 "Excavate" means to dig, remove, or form a cavity or a hole in an area within the department's jurisdiction.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*

Wt 101.38 "Fetch" means the length of uninterrupted water surface over which the wind blows in a constant direction.

Source. #7071, *eff 8-13-99*

Wt 101.39 "Fill" as a noun means any rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*

Wt 101.40 "Fill" as a verb means to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within the jurisdiction of the department.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*

Wt 101.41 "Flats" means relatively level landforms composed of unconsolidated mineral and organic sediments usually mud or sand, usually continuous with the shore and that are alternately flooded and exposed by the tides.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97*
(from Wt 101.37)

Wt 101.42 "Float" means a platform anchored near a shoreline for watercraft, commercial or recreational use that is supported by buoyancy devices.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97*
(from Wt 101.38)

Wt 101.43 "Functional assessment" means an evaluation of a wetland to determine the functions and values it performs within the context of the broader landscape for the purpose of establishing compensatory mitigation under Chapter Wt 800.

Source. #8053, *eff 2-28-04*

Wt 101.44 "Grandfathered status" means that a structure:

- (a) Was in place before permit jurisdiction under RSA 482-A:3, I or its predecessor statute, RSA 483-A:1, I, took effect;
- (b) Has remained unaltered in location, size and configuration; and
- (c) Has not been abandoned within the meaning of Wt 502.05, Wt 303.05(a)(4), Wt 101.01.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97*
(from Wt 101.39)

Wt 101.45 "Highest observable tideline" means a line defining the farthest landward limit of tidal flow, not including storm events, that can be recognized by indicators such as the presence of a strand line of

flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks farther flow of the tide.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.40)

Wt 101.46 "Hydric soil" means soil that is saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6199, *eff* 2-29-96; ss and moved
by #6498-A, *eff* 4-23-97 (from Wt 101.41)

Wt 101.47 "Hydrophyte" means a plant adapted for life in water or saturated soils.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.42)

Wt 101.48 "Intermittent stream" means a stream that flows for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.43)

Wt 101.49 "Jetty" means a structure extending generally perpendicular to the shore into tidal waters or a surface water body and designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.44)

Wt 101.50 "Jurisdiction" means the regulatory authority under RSA 482-A.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.45)

Wt 101.51 "Jurisdictional area" means an area that is subject to regulation under RSA 482-A, as described therein.

Source. #8053, *eff* 2-28-04

Wt 101.52 "Maintenance of structures" means the repair or replacement of existing legal structures.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.46)

Wt 101.53 "Major docking system" means a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boatslips, including those previously existing and proposed.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.47)

Wt 101.54 "Major project" means a project of such size and scope that it has the potential to create a significant impact on wetlands or waters of the state, pursuant to Wt 303.02.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6199, *eff* 2-29-96; ss and moved
by #6498-A, *eff* 4-23-97 (from Wt 101.48)

Wt 101.55 "Marina" means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.49)

Wt 101.56 "Marsh" means a wetland:

- (a) That is distinguished by the absence of trees and shrubs;
- (b) Dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and
- (c) Where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.50)

Wt 101.57 "Minimum impact project" means a minor project that by virtue of its size and nature is likely to have a negligible impact by itself or in the aggregate pursuant to Wt 303.04, provided adequate measures are employed to protect the environment.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.51)

Wt 101.58 "Minor project" means a project of such size, scope or nature that it has the potential of having more than a negligible impact upon wetlands or waters of the state or other areas within the department's jurisdiction pursuant to Wt 303.03, unless adequate measures are employed to protect the environment.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.52)

Wt 101.59 "Mooring" means a temporary, removable or permanent device, such as a buoy, to which watercraft can be secured.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97 (from Wt 101.53)

Wt 101.60 "Navigable frontage" means the frontage that can be accessed by a boat having at least a 6 foot beam and 2 foot draft at normal high water.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97
(from Wt 101.54)

Wt 101.61 "Nontidal wetland" means a wetland not subject to periodic inundation by tidal waters.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97
(from Wt 101.55)

Wt 101.62 "Normal high water" for lakes or ponds means the full lake elevation as determined by the director.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97
(from Wt 101.56)

Wt 101.63 "Open pile construction" means piles installed far enough apart to allow free flow and passage of water and marine life.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97 (from Wt 101.57)

Wt 101.64 "Pasture" means a form of cropland devoted to the production of native or introduced forage which is normally harvested by grazing.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97
(from Wt 101.58)

Wt 101.65 "Permanent dock" means a dock in which the dock and/or its supports are designed to remain in the bank or surface water bottom throughout the non-boating season. Permanent docks can be supported by piles or cribs in the water or can be cantilevered from the bank.

Source. #5739, eff 11-23-93; ss and moved by #6498-A, eff 4-23-97 (from Wt 101.59)

Wt 101.66 "Permit action" means approval, approval with conditions, partial approval, or denial of an application for a permit pursuant to RSA 482-A.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.60)

Wt 101.67 "Pier" means a docking structure built generally perpendicular to the shore intended for securing watercraft and/or for discharging and loading passengers, freight, and other goods.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.61)

Wt 101.68 "Pile" means a long, slender column of timber, steel, concrete, stone, or other rigid material driven or jetted into a beach, bank or bottom of a waterbody.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.62)

Wt 101.69 "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Source. #8053, *eff* 2-28-04

Wt 101.70 "Preservation" means the permanent protection of wetland and upland areas using legal and physical mechanisms so that the resource remains in a natural or undeveloped condition.

Source. #8053, *eff* 2-28-04

Wt 101.71 "Public hearing" means a public proceeding conducted for the purpose of acquiring information that will be considered in evaluating a proposed permit and/or a removal/restoration action, and which affords the public the opportunity to present its views, opinions and information.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.63)

Wt 101.72 "Repair" means the restoring of an existing legal structure by partial replacement of worn, broken, or unsound parts.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.65)

Wt 101.73 "Replacement" means the substitution of a new structure for an existing legal structure with no change in size, dimensions, location, configuration, construction, or which conforms in all material aspects to the original structure.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.66)

Wt 101.74 "Retaining wall" means a structure constructed generally parallel to and against the shoreline to sustain a bank or prevent erosion.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.67)

Wt 101.75 "Revetment" means a sloped facing of layered stone, concrete, or other hard material built to protect a bank or embankments by dissipating wave energy.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.68)

Wt 101.76 "Rip-rap" means cobble-sized and boulder-sized rocks placed on a bank to prevent erosion.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.69)

Wt 101.77 "Roadway" means a legally existing structure that is designed, constructed, or improved to provide and support safe passage for public or private vehicular traffic.

Source. #7855, *eff* 3-21-03

Wt 101.78 "Rocker box" means a mechanical device used to separate gold and other minerals from lighter sediments.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.70)

Wt 101.79 "Seasonal dock or seasonal structure" means a dock and any associated supports designed to be completely removed from the water during the non-boating season and includes pipe docks or floating docks.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.71)

Wt 101.80 "Sedimentation controls" means silt fences, hay bales, and other methods utilized to trap water-borne sediment and provide protection against erosion until properly installed erosion controls can take effect.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.72)

Wt 101.81 "Shoal" means a portion of a waterbody where the bottom is usually submerged, with insufficient depth to allow for safe navigation for some watercraft.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.73)

Wt 101.82 "Shoreline frontage" means the average of the distances of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the normal high water line.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.74)

Wt 101.83 "Significant environmental impact" means that a proposed project is classified as a major project in accordance with Wt 303.02 and the jurisdictional resources to be impacted by the proposed project are an important physical component of a wetland ecosystem or coastal zone ecosystem.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.75)

Wt 101.84 "Siltation curtain" means an impervious barrier erected to prevent silt and sand and/or fines from being washed into a wetland, surface water body or other area of concern.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff* 4-23-97 (from Wt 101.76)

Wt 101.85 "Sluice" means an inclined trough to conduct water to a rocker box for separating gold and other minerals from lighter sediments.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.77)

Wt 101.86 "Structure" means something installed, erected or constructed. Structure(s) include, but are not limited to, the following: fence, dock, breakwater, post, pile, building, bridge, culvert and wall.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.78)

Wt 101.87 "Substantial public interest" means where the jurisdictional resources to be impacted by the proposed project are of special value from a local, regional, or state perspective and issues are raised pursuant to RSA 482-A:1.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.79)

Wt 101.88 "Surface water body" or "surface waters" means those portions of waters of the state, as defined by RSA 482-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, ponds and tidal waters.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff* 4-23-97 (from Wt 101.80)

Wt 101.89 "Swamp" means a wetland that is dominated by trees and/or shrubs.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.81)

Wt 101.90 "Tidal buffer zone" means the area extending landward 100 feet from the highest observable tide line. This area can contain wetlands, transitional areas, and natural and developed upland areas.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.82)

Wt 101.91 "Tidal flat" means a relatively level landform composed of unconsolidated mineral and organic sediments, usually continuous with the shore, and that is alternately flooded and exposed by the tides.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.83)

Wt 101.92 "Tidal flushing" means the influx and outflow of water associated with the ebb and flow of the tide.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.84)

Wt 101.93 "Tidal wetland" means a wetland whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.85)

Wt 101.94 "Unnecessary hardship" means a hardship created by a special condition of the land which distinguishes it from other land in the same area. A hardship does not exist if it relates to the personal circumstances of the landowner rather than the land itself.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.86)

Wt 101.95 "Upland" means an area of land that is not a jurisdictional area.

Source. #8053, *eff* 2-28-04

Wt 101.96 "Upland buffer" means an area of land that is contiguous to a jurisdictional resource and that contributes to the functions and values of that resource.

Source. #8053, *eff* 2-28-04

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Wt 101.97 "Watershed" means a geographical area in which all water drains to a given stream, lake, wetland, estuary, or ocean.

Source. #8053, *eff* 2-28-04

Wt 101.98 "Weephole" means a small drainage opening used to allow proper drainage and prevent frost and ice damage to retaining structures.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff* 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.87)

Wt 101.99 "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff* 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.88)

Wt 101.100 "Wetland creation" means the transformation of upland to wetland at a site where the upland was not created by human activity such as by filling or water diversion

Source. #8053, *eff* 2-28-04

Wt 101.101 "Wetland restoration" means the re-establishment of a filled, dredged, or drained wetland to its historic condition, so as to restore lost functions to the greatest extent practicable, by removal of fill, restoration of hydrology to the area, or by such other means as are necessary.

Source. #8053, *eff* 2-28-04

Wt 101.102 "Wet meadow" means a herb-dominated area typically with non-woody vegetation less than 3 feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained or hydric B soil conditions as defined by Env-Ws 1014.02.

Source. (See Revision Note at chapter heading for Wt 101)
#5536 *eff* 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Wt 101.89)

Wt 101.103 "Wharf" means a docking structure built generally parallel to the shore and used to secure watercraft and/or to discharge and load passengers, freight and other goods.

Source. #5739, *eff* 11-23-93; ss and moved by #6498-A, *eff* 4-23-97 (formerly Wt 101.90)

PART Wt 102 STATEMENT OF PURPOSE AND ACCESS TO FILES

Wt 102.01 Purpose. The purpose of these rules is to support the finding of public purpose set forth in RSA 482-A:1. In addition, the department declares that the purpose of these rules shall be to afford the

maximum degree of protection for the natural environment while allowing individual landowners the freedom to use and enjoy their land as is consistent with this public purpose.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

Wt 102.02 Gender. All references to he or himself shall be construed to mean he or she, himself or herself.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6498-A, eff 4-23-97

Wt 102.03 Access to Files. The files of the department are open to public inspection upon reasonable request during normal working hours. Information which is available for public inspection may be copied. The actual cost of producing copies shall be the fee charged for copies made by the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

PART Wt 103 SOURCE OF AUTHORITY

Wt 103.01 Statute Granting Authority. The department is granted authority under RSA 482-A, or its predecessor statute RSA 483-A, to act on matters relating to resources of the state, including but not limited to excavating, dredging, or filling in or adjacent to waters of the state.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97

CHAPTER Wt 200 RULES OF PRACTICE AND PROCEDURE

PART Wt 201 SCOPE; TYPE OF HEARINGS

Wt 201.01 Scope. The rules of this chapter shall govern proceedings before the department relating to activities regulated under RSA 482-A. The objective of these rules shall be to secure a just and speedy determination of every proceeding.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 201.02 Types of Hearings and Procedures.

(a) Hearings on permit applications, when required by Wt 202.01, or when held by the department on its own initiative shall be conducted pursuant to Env C-205.

(b) Hearings to reconsider an administrative order shall be conducted pursuant to Wt 203.02(a).

(c) Hearings to reconsider a permitting decision shall be conducted pursuant to Wt 203.02(c).

(d) Administrative fine hearings shall be conducted pursuant to Env-C 601.

(e) Rulemaking hearings shall be held pursuant to RSA 541-A and conducted pursuant to Env C-203.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 202 PERMIT ACTION

Wt 202.01 Application Hearings Required. An application hearing shall be held if a project results in significant environmental impact on the resources protected by RSA 482-A, as defined by 101.77, or if the project is of substantial public interest as defined by Wt 101.81.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 202.02 - RESERVED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; rpld by #6404, eff 12-21-96

Wt 202.03 Minimum Impact Projects.

- (a) Applications shall be either expedited or regular.
- (b) All minimum impact projects, except those that do not meet the expedited criteria, shall be subject to expedited review.
- (c) Expedited review shall not occur unless applications are complete as set out in Wt 505.01 and conform to department rules and RSA 482-A.
- (d) The procedure for expedited review shall be followed as outlined in Wt 505.02 and Wt 506.02.
- (e) All minimum impact projects that do not comply with application completeness requirements for either the expedited review criteria for minimum impact projects under Wt 505.01 or the application completeness requirements for seasonal dock projects under Wt 506.01 and expedited review criteria for seasonal dock projects under Wt 402.05 shall be subject to regular review pursuant to Wt 501.
- (f) After-the-fact applications shall not be expedited.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5904, eff 9-30-94; amd by
#6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99

PART Wt 203 RECONSIDERATION

Wt 203.01 Requesting Reconsideration.

- (a) Any person receiving an administrative order may request the department to reconsider the order or any part of the order. Requests for reconsideration of an administrative order shall be filed in accordance with Env-C 206.
- (b) Any person aggrieved by a permitting decision made by the department may request the department to reconsider any part of the denial or permit and requests for reconsideration of this decision shall be filed in accordance with Env-C 206.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 203.02 Hearings on Reconsideration.

(a) Reconsideration hearings of administrative orders shall be:

(1) Noticed in accordance with RSA 482-A:8 and 482-A:9 and Env-C 204.02;

(2) Conducted in accordance with Env-C 204.04, Env-C 204.07 through Env-C 204.09, Env-C 204.10(a), Env-C 204.11 through Env-C 204.14, Env-C 204.15(a), Env-C 204.16(b) and (c), and Env-C 204.17.

(b) The department's decision on reconsideration shall not be limited to evidence submitted during the hearing on reconsideration, but shall be based on all information relevant to the matters under consideration and available to the department as decision maker.

(c) Reconsideration hearings of a permitting decision shall be conducted in accordance with Env-C 205.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 204 VIOLATIONS

Wt 204.01 Notice. Reports of suspected violations shall be in writing, identify the author, and shall include directions to the site and as much information about the violator as available.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Wt 205.01)

Wt 204.02 - RESERVED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

Wt 204.03 Field Inspections.

(a) Upon receipt of written notice from a member of the general public of unauthorized work, a field inspection shall be conducted to determine:

- (1) If a violation exists;
- (2) If it is reversible;
- (3) The seriousness of the violation;
- (4) Whether it was a knowing violation; and
- (5) If immediate corrective action is necessary.

(b) If the municipal conservation commission conducts a preliminary field inspection to determine if a violation has occurred, the department shall review that report and consider its findings.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Wt 205.03)

Wt 204.04 Irreversible Unauthorized Projects. If a field inspection reveals on-going irreversible unauthorized projects, information shall be reported to the attorney general's office and support provided to that office to obtain the halting of work by appropriate legal means.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Wt 205.04)

Wt 204.05 Suspension, Revocation, or Modification of Permits.

(a) The director shall make an initial decision to suspend, revoke or modify a wetlands permit whenever s/he receives information that supports a conclusion that the owner or contractor is not in compliance with the terms of the permit.

(b) Upon making such an initial decision, the director shall notify the owner or contractor in writing of the intention to suspend, revoke, or modify said permit and provide an explanation of the basis for the director's decision.

(c) Pursuant to RSA 541-A:30 and RSA 482-A:8, the director shall schedule a hearing on the notice of proposed permit suspension, revocation, or modification.

(d) Such hearing shall be considered a reconsideration hearing and shall be conducted in accordance with the provisions of Wt 203.02.

(e) After the reconsideration hearing, if there is a decision to suspend, revoke, or modify a permit, within 15 days of the close of any hearing conducted pursuant to (d), above, the director shall issue a decision to the owner in writing and shall state the basis for the decision.

(f) Pursuant to RSA 482-A:10, the owner may appeal the suspension, revocation or modification of a permit to the Wetlands Council.

Source. #6498-B, eff 4-23-97

Wt 204.06 After-the-Fact Application. Applications received after work is completed shall be subjected to the same review as given any other application. Consideration of an after-the-fact application shall not preclude or limit the department's exercise of any enforcement powers it otherwise possesses.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Wt 205.06)

CHAPTER Wt 300 CRITERIA AND CONDITIONS

REVISION NOTE:

Document #5186, effective 7-23-91, made extensive changes to the wording, format, and structure of Wt 300. Document #5186 supersedes all prior filings for the sections in this chapter. The prior filings for former Wt 300 include the following documents:

#2271, eff 1-10-83	#4297, eff 7-23-87
#2924, eff 12-11-84	#4352, eff 1-4-88
#3074, eff 7-26-85	#5028, eff 12-20-90

See the revision note at the head of Chapter Wt 600 relative to the deletion of former rules under that chapter by Document #5185, effective 7-23-91 and the incorporation of those former rules into Wt 300 by Document #5186.

PART Wt 301 DELINEATION AND CLASSIFICATION OF WETLANDS

Wt 301.01 Delineation of Wetlands Boundaries.

(a) Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January, 1987).

(b) Delineations based on hydrophytic vegetation or hydric soils alone shall be sufficient for minimum impact projects that meet the criteria of Wt 303.04, provided the vegetation or soil has not been disrupted by artificial planting or past dredging or filling.

(c) The hydric soils component of delineations produced under (a) or (b) above shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998), published by the New England Interstate Water Pollution Control Commission.

(d) Any plan required by RSA 482:A that is submitted in support of applications for dredge and fill of wetlands as defined in Wt 101.90 that are classified as major or minor projects in accordance with Wt 303.02 and Wt 303.03 respectively, shall be:

- (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
- (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s); or
- (3) Signed by a homeowner acting on his or her own behalf, when the homeowner prepares the plan for the development of their primary residence, showing the impacts resulting from such development.

(e) Delineations submitted in accordance with paragraph (d) above, shall comply with the delineation methods prescribed in Part 4 of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January, 1987).

(f) Nothing in this section shall prevent individuals permitted in accordance with RSA 485-A:36, and rules promulgated there under, from conducting wetland delineations in accordance with the exemptions provided under RSA 310-A:79(IV).

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B,

eff 4-23-97; amd by #7047, eff 6-29-99; amd by #7896, eff 5-22-03

Wt 301.02 Classification of Wetland Types.

(a) Wetlands shall be classified by the applicant in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al, 1979).

(b) Wetlands classification shall be identified on plans for all major projects involving dredge and/or fill of wetlands.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

PART Wt 302 CRITERIA FOR EVALUATION

Wt 302.01 Statement of Purpose.

(a) For tidal wetlands need shall be demonstrated by the applicant prior to department approval of any alteration of tidal wetlands. No project shall be allowed that intrudes into a tidal wetland, unless the department finds it to be for the public good as set out in RSA 482-A:1. Preserving the integrity of saltmarshes and other tidal wetlands shall be given highest priority by the department, because of the high productivity, rarity of such wetlands, and difficulty in restoration of value and function for those environments.

(b) For nontidal wetlands need shall be demonstrated by the applicant prior to department approval of any alteration of nontidal wetlands. The department shall place emphasis in preserving bogs and marshes. This priority shall be based upon the rarity of those environments and the difficulty in restoration of value and function for those environments.

(c) For tidal buffer zones need shall be demonstrated by the applicant prior to department approval of any alteration of undeveloped tidal buffer zone. The department shall place its emphasis on preserving the ability of the buffer area to enhance habitat values in the adjoining tidal wetland, and to protect tidal environments from potential sources of pollution.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 302.02 Department Action. The criteria in this part shall be used to meet the purpose expressed by RSA 482-A:1 when determining whether to approve, approve with conditions, approve-in-part with conditions, or deny applications.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 302.03 Avoidance, Minimization, and Mitigation.

(a) The applicant shall submit a statement describing the impact of the proposed project design and provide evidence which demonstrates that, subject to (b) below:

- (1) Potential impacts have been avoided to the maximum extent practicable; and
- (2) Any unavoidable impacts have been minimized.

(b) For all permanent impacts that will remain after avoidance and minimization measures have been addressed, the applicant shall submit a compensatory mitigation proposal in accordance with Chapter Wt 800, unless exempted by (c) below.

(c) An applicant shall not be required to submit a compensatory mitigation proposal only if:

- (1) There is no impact, within a jurisdictional area, to:
 - a. An exemplary natural community as defined or identified by the natural heritage inventory; or
 - b. A state or federally listed endangered or threatened species or its habitat or reproduction areas; and
- (2) The total project meets one or more of the following qualifying criteria:
 - a. The project qualifies as minimum impact in accordance with Wt 303.04;
 - b. The project impacts less than 10,000 sq. ft. of wetlands but otherwise qualifies as minor impact in accordance with Wt 303.03;
 - c. The project involves only riprap or other bank stabilization to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
 - d. The project involves only bank stabilization by exclusively incorporating bio-engineering methods, or includes such work in combination with other qualifying criteria;
 - e. The project involves only minor or minimum impacts to streams identified in Wt 303.03 and Wt 303.04 or includes such work in combination with other qualifying criteria;
 - f. The project involves only the installation of accessory docking structures or the construction of new shoreline structures and breakwaters, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all new shoreline structures on the frontage is less than 2,000 square feet; or
 - g. The project involves only construction of a pond classified as a minor or minimum impact identified in Wt 303.03 or Wt 303.04 or includes such work in combination with other qualifying criteria.

(d) Mitigation shall not be required for impacts that are not intended to remain after the project is completed, provided the areas are restored in accordance with provisions shown in the approved project plans.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; ss by #8062, eff 3-13-04

Wt 302.04 Requirements for Application Evaluation.

(a) For all major and minor projects the applicant shall demonstrate by plan and example that the following factors have been considered in their design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) The need for the proposed impact;
- (2) The alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site;
- (3) The type/classification of the wetlands involved;
- (4) The relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (5) The rarity of the wetland, surface water, sand dunes, or tidal buffer zone area;
- (6) The surface area of the wetlands that will be impacted;
- (7) The impact on plants, fish, and wildlife including:
 - a. Rare, special concern species;
 - b. State and federally listed threatened and endangered species;
 - c. Species at the extremities of their ranges;
 - d. Migratory fish and wildlife; and
 - e. Exemplary natural communities identified by the New Hampshire Natural Heritage Inventory (NHI) - Department of Resources and Economic Development.
- (8) The impact of the proposed project on public commerce, navigation and recreation;
- (9) The extent to which a project interferes with the aesthetic interests of the general public. For example, where an applicant proposes the construction of a retaining wall on the bank of a lake the applicant would be required to indicate the type of material to be utilized and the effect of the construction of the wall on the view of other users of the lake;
- (10) The extent to which a project interferes with or obstructs public rights of passage or access. For example, where the applicant proposes to construct a dock in a narrow channel the applicant would be required to document the extent to which the dock would block or interfere with the passage through this area;

- (11) The impact upon abutting owners pursuant to RSA 482-A:11, II. For example, if an applicant is proposing the rip-rapping of a stream the applicant would be required to document the effect of such work on upstream and downstream abutting properties;
- (12) The benefit of a project to the health, safety, and well being of the general public;
- (13) The impact of a proposed project on quantity or quality of surface and ground water. For example, where an applicant proposes to fill wetlands he/she would be required to document the impact of the proposed fill on the amount of drainage entering the site versus the amount of drainage exiting the site and the difference in the quality of water entering and exiting the site;
- (14) The potential of a proposed project to cause or increase flooding, erosion, or sedimentation;
- (15) The extent to which a project that is located in surface waters reflects or redirects current or wave energy which might cause damage or hazards;
- (16) The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland or wetland complex were also permitted alterations to the wetland proportional to the extent of their property rights. For example, an applicant who owned only a portion of a wetland would document his percentage of ownership of that wetland and the percentage of that ownership that would be impacted;
- (17) The impact of the proposed project on the values and functions of the total wetland or wetland complex;
- (18) The impact upon the value of the sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;
- (19) The impact upon the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and
- (20) The degree to which a project redirects water from one watershed to another.

(b) For all minimum projects, except for recreational mineral dredging activities permitted in accordance with Wt 504, the applicant shall demonstrate by plan and example that the following factors have been considered in his design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) Type of wetland to be impacted;
- (2) Surface areas of wetlands impacted;
- (3) Relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (4) The impact upon abutting owners pursuant to RSA 482-A:11, II; and
- (5) Lack of alternatives with lesser wetlands and surface water impacts.

(c) In addition to the requirements of Wt 302.04(a) and (b), the applicant shall demonstrate by plan and example that the following factors have been considered in the design in assessing the impact of the proposed project to areas in and adjacent to tidal wetlands including the tidal buffer zone:

- (1) The extent to which a project impacts beach or tidal flat sediment replenishment and movement of sediments along a shore;
 - (2) The impact on a tidal wetland's ability to dissipate wave energy and storm surge; and
 - (3) The impact of project runoff on salinity levels in tidal environments.
- (d) Unless the conditions of Wt 304.16 apply, the department shall not grant a permit if:
- (1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
 - (2) The project would cause or contribute to significant degradation of waters of the state;
 - (3) The project will cause random or unnecessary destruction of wetlands;
 - (4) The project proposes fill of a wetland to achieve septic set back from wetlands to meet water division or local requirements; or
 - (5) The requirements of Wt 302.03 are not met or where the applicant has failed to document consideration of factors as required in Wt 302.04(a), (b), (c).

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; amd by INTERIM #5400, eff 5-21-92 EXPIRED: 9-18-92; amd by #5548, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 303 CLASSIFICATION OF PROJECTS

Wt 303.01 Assignment of Classification. Projects shall be classified according to the criteria of this part.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 303.02 Major Projects. Major projects shall be those that meet any one or more of the following criteria:

- (a) Projects in sand dunes, tidal wetlands or bogs except for repair of existing structures pursuant to Wt 303.04(v);
- (b) Projects within 100 feet of the highest observable tide line that alter any bank, flat, wetlands, surface water, or undeveloped uplands except for repair of existing structures pursuant to Wt 303.04(v);
- (c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate;
- (d) Construction or modification of major docking system defined by Wt 101.48, and any dock adjacent or attached to a breakwater;
- (e) Construction or modification of retaining walls lakeward of the natural shoreline and below the natural mean high water level of great ponds, or lakeward of the normal shoreline and below the artificial high water level of lakes where the state has fee simple ownership or flowage rights. Refacing that does not add more than 6 inches to the width of the wall shall not in itself make a project major;

- (f) Projects located in or adjacent to designated prime wetlands under RSA 482-A:15;
- (g) Removal of more than 20 cubic yards of rock, gravel, sand, mud or other material from public waters;
- (h) Projects that disturb more than 200 linear feet, measured along the shoreline, of a lake or pond or its bank;
- (i) Projects that alter the course of or disturb 200 or more linear feet of an intermittent or perennial nontidal stream or river channel or its banks. For intermittent streams, this distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks;
- (j) Construction of a breakwater in public waters;
- (k) Projects in a wetland that have been identified by Natural Heritage Inventory - Department of Resources and Economic Development as an exemplary natural community, and/or that has documented occurrences of state or federally listed Endangered or Threatened species;
- (l) Projects which, when taken in the aggregate with previous work on the property within the last 5 years, would be considered major. For example, if previous work on the property was fill of 15,000 sq.ft. of nontidal wetlands and an individual applies to fill an additional 15,000 sq. ft. of nontidal wetlands on the property;
- (m) Any project that is related to other applications or permits in the wetlands area or wetlands complex in a manner such that if the proposed action were considered to be in a single application the combined impact would be considered major. For example, if two individuals apply to rip-rap 150 linear feet of a stream that is part of the same wetlands complex;
- (n) Fill in public waters for the purposes of making land; and
- (o) Construction of or replenishment of a beach that does not meet the criteria for minimum impact under Wt 303.04(d) or Wt 303.04(aa), or minor impact under Wt 303.03(f).

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #7988, eff 11-21-03

Wt 303.03 Minor Projects. Minor projects shall be those projects that meet any of the following criteria and that do not meet any of the criteria of Wt 303.02:

- (a) Projects in any bank, flat, marsh, or swamp or in and adjacent to any waters of the state or within 100 feet of the highest observable tide line that do not meet any of the criteria of Wt 303.02, Wt 303.04 or Wt 303.05.
- (b) Projects that involve work within 50 feet of a saltmarsh that do not meet the criteria of Wt 303.02.
- (c) Projects that involve dredge, fill, or construction of a permanent structure in a stream or marsh that do not meet the criteria of Wt 303.02, except those projects in streams which meet the criteria of Wt 303.04(g).
- (d) Construction or modification of any docking system that:
 - (1) Provides for 4 boatslips including previously existing boatslips;

(2) Uses no more than 100 feet of waterfront; and

(3) Exceeds the design and construction criteria discussed at Wt 402.01 for minimum impact docks classified under Wt 303.04.

(e) Construction of a pond with less than 20,000 square feet of impact in a wetland or surface waters, which does not meet the criteria of Wt 303.04(p).

(f) Construction of or replenishment of a beach that does not exceed the criteria in Wt 303.04(d) or the criteria in Wt 303.04(aa) other than to propose:

(1) Replenishment in excess of the limit of one replenishment in a 6 year period; or

(2) The use of more than 10 cubic yards of sand, but not more than 20 cubic yards.

(g) Removal of no more than 20 cubic yards of rock, gravel, sand, mud or other materials from public waters.

(h) Projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Wt 303.04(f).

(i) Projects involving the removal of emergent or submergent vegetation when the method used disturbs the bottom sediment of the waterbody unless Wt 303.04(r) applies.

(j) Repair or replacement of existing retaining walls that requires work in the water, but that results in no change in height, length, location, or configuration. If a wall is to be refaced, such additional width shall not exceed 6 inches.

(k) Projects that disturb between 50 and 200 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Wt 303.02.

(l) Projects that alter the course of or disturb less than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks and do not meet the criteria for minimum impact under Wt 303.04(n). For intermittent streams, this distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks.

(m) Installation of new tie-off piles, ice clusters, or dolphins which do not, by their presence, add boatslips to an existing docking system.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #7988, eff 11-21-03

Wt 303.04 Minimum Impact Projects. Minimum Impact Projects shall be those projects that meet any of the following criteria:

(a) Construction or modification of a seasonal pier or wharf if no more than two slips, including previously existing slips, are proposed, and all criteria of Wt 402 are met;

(b) Projects in previously developed upland areas within 100 feet of the highest observable tide line unless they are major or minor as defined in Wt 303.02 or Wt 303.03;

(c) Repair or replacement of existing retaining walls that is performed "in the dry" during drawdown of waters, and that results in no change in height, length, location, or configuration. If a wall is to be refaced such additional width shall not exceed 6 inches;

(d) Construction of a beach provided:

(1) The beach shall serve a privately-owned single family residence;

(2) No fill or dredge shall occur below the high water line or full pond elevation;

(3) The total amount of dredge or fill shall not exceed 900 square feet;

(4) No work shall be conducted in a swamp, marsh, tidal buffer zone, bog, or in or adjacent to a prime wetland;

(5) The work shall not alter more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet; and

(6) No more than 10 cubic yards of sand shall be used;

(e) Roadway construction through forested wetlands for the purpose of conducting forest management activities, provided:

(1) Construction shall be done during frozen conditions;

(2) Roads shall be cleared by felling timber in and adjacent to the roadway;

(3) The road base shall be constructed using no fill other than:

a. Snow pushed on and frozen over the road base; or

b. Stumps, inverted in places where support of the road base is necessary;

(4) The minimum required ditches shall be constructed to obtain adequate drainage;

(5) Each road crossing shall be no more than 15 feet wide and no more than 200 feet long;

(6) Stream crossings shall incorporate pole fords with no stumping within the stream banks; and

(7) Spring retirement of the winter roads shall include soil stabilization and drainage, including water bars, as necessary on the site to prevent the roadway from becoming a channel for ground or surface water runoff;

(f) Projects involving alteration of less than 3000 square feet in swamps or wet meadows that are not in prime wetlands or do not meet the requirements of Wt 303.02(k), provided that no previous department permit has placed restrictions on the property of the applicant;

(g) Installation of a culvert, pole, or rock ford and associated fill to permit vehicular access to a piece of property for forest management provided:

(1) Access shall not be used for subdivision, development, or other land conversion to non-forestry uses;

(2) Roadway width at the crossing shall not exceed 20 feet;

(3) Fill width, measured at toe of roadway side slopes, shall be minimized, and shall not exceed 50 feet;

(4) Fill for any single wetland crossing shall not exceed 50 feet in length, measured along the proposed access way; and

(5) Crossings shall be limited to those that:

a. Do not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;

b. Are not located in or adjacent to prime wetlands;

c. Do not meet the criteria of Wt 303.02(k);

d. Do cross stream channels less than 10 feet wide; and

e. Do cross wetlands that have no standing water for 10 months of the year.

(h) Installation of a bridge provided that:

(1) No work is done in the water or wetland;

(2) The fill does not exceed 3,000 sq.ft. of fill on the banks of a river or bed of the river; and

(3) The bridge is not in prime wetlands, bogs, marshes, sand dunes, undisturbed tidal buffer zone or does not meet the requirements of Wt 303.02(k);

(i) Construction of temporary crossings of brooks, streams, or rivers for the transportation of forest products or the construction or maintenance of utility pipes or lines and is not in prime wetlands or within 100 feet of the highest observable tide line or does not meet the requirements of Wt 303.02(k);

(j) Projects located within the right-of-way of a public road that do not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone, prime wetlands or do not meet the requirements of Wt 303.02(k) and do not exceed one of the following criteria:

(1) Drainage structures do not exceed 3000 square feet of dredge or fill in area;

(2) Installation of culverts cross streams less than 10 feet wide, measured from base of bank slope to base of bank slope;

(3) Wetlands crossed have no standing water for 10 months of the year, and do not exceed 50 feet across, measured along the roadway and the fill width measured at the base of the roadway side slopes does not exceed 50 feet; or

(4) Shoulder widening does not exceed 3 cubic yards of fill per linear foot in wetlands that have no standing water for 10 months of the year, and does not exceed 10 feet of additional encroachment measured from base of slope;

(k) Maintenance dredging, when necessary to provide continued usefulness, of nontidal drainage ditches, man-made ponds, and spillways, provided that:

(1) The work is done within the original bounds of a legally constructed project;

(2) Projects are not located in or adjacent to prime wetlands;

(3) The work does not exceed 20,000 square feet; and

(4) For man-made ponds, the pond has not been abandoned as defined in Wt 101.01;

(l) Temporary cofferdams and other water control devices constructed in flowing water or adjacent to dams in conjunction with the repair or maintenance of existing structures. Temporary cofferdams means temporary watertight enclosures built in the water and pumped dry to expose the bottom so that construction may be undertaken. All such work shall be designed and supervised by a professional engineer and shall be removed upon completion of repair and/or maintenance.

(m) Projects that disturb less than 50 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Wt 303.03 or Wt 303.02.

(n) Projects that alter the course of or disturb less than 50 linear feet, measured along the thread of the channel, of an intermittent nontidal stream channel or its banks provided construction is performed during periods of non-flow.

(o) Projects deemed minimum impact by the department based on the degree of environmental impact.

(p) Construction of a pond with less than 20,000 sq.ft. of wetlands impact, provided none of the wetlands have type A hydric soil as defined in Env-Ws 1014.02, and that there are no streams into or out of the proposed pond site, and the project is not located in prime wetlands and does not meet the requirements of Wt 303.02(k).

(q) Projects to control aquatic weeds by cutting above the roots and harvesting, provided there is no mobilization of bottom sediments and the project is not located in prime wetlands, marshes, bogs, and does not meet the requirements of Wt 303.02(k).

(r) Projects to control exotic aquatic weeds Cabomba carolina (fanwort) and/or Myriophyllum heterophyllum (exotic milfoil) as authorized by RSA 487:17, provided work is conducted under the supervision of the department unless included in Wt 303.05 and provided the project is not located in prime wetlands, marshes, bogs or tidal wetlands and does not meet the requirements of Wt 303.02(k).

(s) Dredging for gold or other minerals, provided the criteria of Wt 304.14 are not exceeded and provided the project is not located in prime wetlands, marshes, bogs, and does not meet the requirements of Wt 303.02(k).

(t) Restoration of altered or degraded wetlands provided the following criteria are met:

- (1) The project receives financial support and direct supervision of a New Hampshire state agency, the US Environmental Protection Agency, the US Army Corps of Engineers, the US Natural Resources Conservation Service, or the US Fish and Wildlife Service;
 - (2) The project shall not be used to perform restoration in cases where the applicant is subject to a removal or restoration order;
 - (3) The project is not located in or adjacent to prime wetlands; and
 - (4) The project does not meet the criteria of Wt 303.02(k).
- (u) Maintenance or improvement of existing crop or pasture land for continued agricultural use, provided that:
- (1) The applicant's county conservation district certifies in writing that:
 - a. The project is in accordance with a plan developed to standards of the "Best Management Wetland Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993;
 - b. That the project is necessary for and/or incidental to a preexisting and ongoing bonafide agricultural operation as defined by RSA 21:34-a; and
 - c. The applicant's county conservation district certifies that the plan is limited by those items addressed by the "Best Management Wetlands Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993.
 - (2) The applicant accepts a permit condition stating that any change in use to a non-agricultural purpose will require further permitting by the department and this permit shall be filed with the registry of deeds.
 - (3) The improvement portion of the project does not impact more than three acres of wetland.
 - (4) The project is not in or adjacent to prime wetlands, is not in sand dunes, is not in the 100 foot tidal buffer zone, and does not meet the requirements of Wt 303.02(k).
 - (5) The project will cause alteration only to wet meadows except where specifically described in "Best Management Wetlands Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993.
 - (6) The application includes:
 - a. A complete copy of the county conservation district's cooperator agreement;
 - b. Conservation plan with accompanying map;
 - c. A USDA soil conservation service soils map with the site located;
 - d. A soils legend identifying poorly drained and very poorly drained map units.
 - (7) The project involves poorly drained or hydric B soils with no greater than 15% inclusion of very poorly drained or hydric A soils as defined by Env-Ws 1014.02.
 - (8) The project does not include filling or draining of wetlands of greater than 3,000 sq. ft. for placement of parking lots, or lot development, or of buildings, with the exception of agri-chemical handling facility buildings.

(v) Maintenance, repair, and replacement in-kind of existing docking structures such as breakwaters, docks, boat houses, piers, wharves, walkways, boat ramps, tie-off pilings, ice clusters, dolphins, or other docking facilities provided:

- (1) No work is proposed that would be prohibited under RSA 482-A:26;
- (2) No change in location, configuration, construction type, or dimensions is proposed; and
- (3) The applicant certifies in writing that:
 - a. The existing structures would be considered grandfathered in their current configuration pursuant to Wt 101.40 and have not been abandoned pursuant to Wt 101.01 or Wt 303.05(a)(4); or
 - b. The existing structures have been constructed in accordance with a previously-issued wetlands permit and have not been abandoned pursuant to Wt 101.01 or Wt 303.05(a)(4);

(w) Excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, for installation of a dry hydrant;

(x) Maintenance, repair, or replacement of a nondocking structure such as a culvert, headwall, bridge, dam, residential utility line, or rip-rap slope of less than 50 linear feet, provided:

- (1) No change in location, configuration, construction type, or dimensions is proposed; and
- (2) The applicant certifies in writing that the structures, in their current location, configuration, construction type and dimensions:
 - a. Were previously permitted by the department and have not been abandoned pursuant to Wt 101.01 or Wt 303.05(a)(4); or
 - b. Would be considered grandfathered under Wt 101.40 and have not been abandoned pursuant to Wt 101.01 or Wt 303.05(a)(4);

(y) Construction of trails in accordance with the "Best Management Practices for Erosion Control During Trail Maintenance and Construction", 1996 that involve less than 3000 square feet of impact to wetlands per crossing, and that cross stream channels less than 10 feet wide.

(z) Installation of a culvert, bridge, pole, or rock ford and associated fill to permit vehicular access to a piece of property for a single family building lot or for noncommercial, recreational uses provided:

- (1) The total jurisdictional impact does not exceed 3,000 square feet;
- (2) The roadway width at the crossing shall not exceed 20 feet;
- (3) The fill width, measured at toe of roadway side slopes, shall be minimized, for example, by steepening of the sideslopes and construction of walls, and not exceed 50 feet;
- (4) Fill for any single wetland crossing shall not exceed 60 feet in length, measured along the centerline of the proposed access way; and
- (5) Such projects shall be limited to crossings that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;

- b. Are not located in or adjacent to prime wetlands, as defined by Wt 701.02 through Wt 701.04;
 - c. Do not meet the criteria of Wt 303.02(k); and
 - d. Cross stream channels less than 10 feet wide.
- (aa) Replenishment of sand on an existing beach provided:
- (1) No sand shall be placed below the high water line or full pond elevation;
 - (2) No work shall be conducted in or adjacent to a prime wetland;
 - (3) No more than 10 cubic yards of sand shall be used; and
 - (4) The beach replenishment shall not exceed the limit of one replenishment in any 6 year period;
- (ab) Construction of an anchoring pad for a seasonal dock provided:
- (1) The pad shall be constructed landward of the high water line or full pond elevation;
 - (2) The pad shall not exceed 7 feet in width, not impact more than 10 linear feet along the bank, with the bank fully stabilized upon completion of construction;
 - (3) Appropriate erosion, siltation, and turbidity control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls maintained until the site has stabilized; and
 - (4) The pad shall not be constructed in or adjacent to prime wetlands, and does not meet the requirements in Wt 303.02(k);
- (ac) Installation of a seasonal boatlift in an existing grandfathered or legally-existing, permitted boatslip, provided the boatlift is:
- (1) Installed such that no additional boatslip is created by installation of the lift;
 - (2) Removed during the non-boating season;
 - (3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water; and
 - (4) Installed in a manner which requires no impact that would necessitate further permit action;
- (ad) Installation of a seasonal personal watercraft lift, provided the personal watercraft lift is:
- (1) Installed immediately adjacent to a dock, and in a legally existing boatslip, or, if there are no other personal watercraft lifts on the frontage, a maximum of 2 lifts installed immediately adjacent to one another and along the owner's shoreline;
 - (2) Removed during the non-boating season;
 - (3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
 - (4) Installed in a manner that creates no impacts that would require further permit action; and

- (5) Located on a parcel of land that has 75 feet or more of shoreline frontage;
- (ae) Installation of residential utility lines and associated temporary impacts to permit utility services for a single family building lot, provided:
 - (1) The total jurisdictional impact shall not exceed 3,000 square feet;
 - (2) The impact width at the crossing shall not exceed 20 feet;
 - (3) Such projects shall be limited to crossings that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;
 - b. Are not located in or adjacent to prime wetlands;
 - c. Do not meet the criteria of Wt 303.02(k); and
 - d. Cross stream channels less than 10 feet wide; and
 - (4) All disturbed areas are regraded to original contours and stabilized within 72 hours following completion of work;
- (af) Temporary impacts associated with the inspection, maintenance, and repair of existing utility lines within an existing utility right of way provided:
 - (1) Total jurisdictional impacts shall not exceed one acre;
 - (2) The equipment used shall be designed to have low ground contact pressure or placed on temporary swamp mats so as to minimize rutting of the soils;
 - (3) The work shall be conducted under low flow or low groundwater conditions, or during frozen ground conditions;
 - (4) Access routes through the right of way shall be designed to minimize impacts to jurisdictional areas;
 - (5) The equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;
 - (6) Refueling of equipment shall occur a minimum of 100 feet away from wetland and surface waters or both;
 - (7) All temporary impacts to wetlands shall be regraded to original contours and stabilized within 72 hours following the completion of work and within 30 days of the start of work;
 - (8) Stream impacts shall be limited to intermittent stream beds less than 10 feet in width and shall be conducted during low flow conditions;
 - (9) No work shall be done in bogs, marshes, tidal wetlands, in or adjacent to prime wetlands, or in surface waters except as provided in (7) above; and
 - (10) Does not meet the criteria of Wt 303.02(k).

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; amd by #5444, eff 8-3-92; amd by #5739,

eff 11-23-93; amd by #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03

Wt 303.05 Projects in Jurisdiction That Do Not Require a Permit. The following activities shall not require application or, unless explicitly stated, a notification to the department:

- (a) Repair or reconstruction of an existing legal structure that meets the following conditions:
 - (1) The size, location, configuration, and construction shall remain unchanged;
 - (2) There shall be no work on any portion of the structure located in the water;
 - (3) The work shall not require the utilization of tracked or wheeled equipment in the department's jurisdiction; and
 - (4) The structure has not been abandoned. Failure to maintain an existing structure in a state so that it is functional, and intact, for a period of 5 years shall be prima facie evidence of abandonment or non-use.
- (b) Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided that the roots of the vegetation are not disturbed, and that the ground is frozen or sufficiently dry to avoid making ruts and that the area is stabilized once thawed and that the project is not located in prime wetlands.
- (c) Placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as appropriate.
- (d) Panning for gold or other minerals in sand or gravel stream beds, provided there is no use of mechanical equipment and no digging in the banks of the stream and provided written permission from the landowner is obtained.
- (e) Temporary placement of a fabric barrier on the bottom of a lake or pond by the department for the control of exotic aquatic weeds Cabomba carolina (fanwort) and/or Myriophyllum heterophyllum (exotic milfoil) as authorized by RSA 487:17 provided the area does not exceed 10,000 sq. ft. and the project is not located in prime wetlands, marshes, bogs or tidal wetlands and does not meet the requirements of Wt 303.02(k).
- (f) Installation of a culvert in an area where waters flow during runoff to such a limited extent as not to create a defined channel nor maintain wetlands vegetation or wetlands soils.
- (g) Utilization of hand tools including auger or tile spade for:
 - (1) Determining limits of jurisdictional wetlands;
 - (2) Determining stability of shoreline for data to be included in a wetlands application; or
 - (3) Educational purposes.
- (h) Hand raking of leaves or other organic debris from the shoreline or lakebed provided that:
 - (1) At the time raking is done, the area raked is exposed by drawdown; or

- (2) Raking does not disturb vegetative roots and is limited to 900 square feet of area.
- (i) Landscaping, gardening, deck or stair construction in the upland tidal buffer zone.
- (j) Removal of a beaver dam by hand or machine provided:
 - (1) Machinery does not enter the water or create any disturbance by filling or dredging to adjacent surface waters, wetlands, or their banks;
 - (2) All dredged materials are placed out of department jurisdiction; and
 - (3) Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water to cause erosion or siltation.
- (k) Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in Wt 303.05(b). For the purposes of this rule, Phragmites sp. and similarly invasive species shall not be considered to "enhance" wetlands.
- (l) Maintenance of public beaches in tidal waters for the purposes of removal of seaweed, algae or other debris provided:
 - (1) Work is done during low tide;
 - (2) No work is done in the water;
 - (3) Work is done by the state or local agency responsible for maintenance of a public beach and not by private land owners; and
 - (4) No work shall be done which involves removal of sand and/or regrading or recontouring of the beach.
- (m) The regrading and recontouring of public beaches as necessary to maintain the integrity of seawalls and to insure the safety and protection of the public on beaches maintained by the state of New Hampshire department of resources and economic development.
- (n) Drilling geotechnical borings during the final design phase of public projects provided:
 - (1) The applicant shall provide the landowner, the department, and the municipal conservation commission and/or the board of selectmen, as appropriate, with written notification of the general location and the type of work to be conducted prior to its commencement;
 - (2) Vehicles used shall be either skid-mounted, portable, or those designed to have low ground contact pressure;
 - (3) Ruts shall be minimized and shall not exceed one foot in depth;
 - (4) The type and manner of drilling shall be selected to minimize impact on water quality;
 - (5) Drill holes shall not exceed 8 inches in diameter;
 - (6) Drill holes shall be back filled with drill spoil or, if conditions require, shall be filled with clean material or grout;
 - (7) Drill cuttings shall be removed out of department jurisdiction, unless they are used as provided in (6) above;

- (8) Equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;
- (9) No filling of wetlands shall be allowed except to smooth or regrade ruts or to use vegetative cuttings as an access roadbase;
- (10) All impacts to wetlands shall be temporary and upon completion of the drilling the rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
- (11) Any drilling in surface waters shall be done using machinery operated from a barge, from the ice, or from adjacent uplands, and department water quality standards shall be met; and
- (12) No work shall be done in bogs, marshes, tidal wetlands, in or adjacent to prime wetlands, or in surface waters except as provided in (11) above.

(o) Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the final design phase of public projects provided:

- (1) The applicant shall provide the landowner, the department, and the municipal conservation commission and/or the board of selectmen, as appropriate, with written notification of the general location and the type of work to be conducted prior to its commencement;
- (2) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;
- (3) All impacts shall be temporary and upon completion of test pitting the rutted and excavated areas shall be back filled with excavated material, regraded and smoothed so that the area will naturally revegetate after one season;
- (4) Appropriate erosion control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls shall be maintained until the site has stabilized; and
- (5) No work shall be done in or adjacent to prime wetlands.

(p) Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous waste materials, provided:

- (1) The agency shall provide the department with permission, written and signed by the landowner or, under legal authorization, shall provide the landowner, the department, and the municipal conservation commission and/or the board of selectmen, as appropriate, with written notification of the general location and the type of work to be conducted prior to its commencement;
- (2) Only tracked or portable equipment shall be used for access to the site or for drilling;
- (3) Ruts shall be minimized and shall not exceed 4 inches in depth;
- (4) Any drilling in surface waters shall be done with portable equipment which does not require vehicles to enter the water, and shall be done in a manner which minimizes impact on water quality;
- (5) Drill holes shall not exceed 8 inches in diameter;
- (6) Drill holes shall be back filled with drill spoil or permanently cased;

- (7) Drill cuttings not used to back fill drill holes shall be removed out of department jurisdiction;
- (8) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;
- (9) All impacts to wetlands shall be temporary and upon completion of the drilling all rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
- (10) No work shall be done in bogs, marshes, tidal wetlands, or in or adjacent to prime wetlands.

(q) Routine roadway and railway maintenance activities, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance, conducted in accordance with “Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire”, published by the New Hampshire department of transportation, dated August 2001 (“BMPs for Routine Roadway Maintenance”), provided:

(1) The activity sponsor shall:

- a. File a properly completed “Notification of Routine Roadway and Railway Maintenance Activities” form with the department, indicating that the proposed project meets the criteria for exemption from the permitting process;
 - i. The name and address of the activity sponsor;
 - ii. The name and telephone number of an authorized representative of the activity sponsor;
 - iii. The location of the proposed activity;
 - iv. A description of the proposed activity;
 - v. Reference to the applicable BMP section under which the activity applies;
 - vi. A copy of the USGS topographical map identifying the location of the proposed project;
 - vii. Sketches of the proposed construction design;
 - viii. Color photographs of the proposed work site showing existing structures, surrounding land, and the subject waterbody; and
 - ix. A signed certification that the information provided above is accurate and correct;
- b. Obtain the notification form from the department at (603)271-2147 or by downloading a copy from <http://www.des.state.nh.us/wetlands>; and
- c. Provide a copy of the completed notification form to the board of selectmen or, if none, to the appropriate governing body, and to the municipal conservation commission, if there is one, at least 5 calendar days prior to commencement of work;

(2) No work shall occur on property not owned by the activity sponsor without the activity sponsor, in addition to the requirements in (1) above, providing:

- a. A written release from all owners of the property on which the work will be done; or

- b. A completed notification form, at least 5 calendar days prior to start of work, to each owner of property that will be impacted by the work;
- (3) No work shall be done in excess of the activities outlined in the “BMPs for Routine Roadway Maintenance”;
- (4) Siltation, erosion, and turbidity controls shall be:
- a. Installed in accordance with the “BMPs for Routine Roadway Maintenance”;
 - b. Maintained so as to maximize their effectiveness; and
 - c. Left in place until disturbed areas are fully stabilized;
- (5) Work shall not involve movement of tracked or wheeled equipment into or through surface waters or wetlands, but only on dry or frozen ground;
- (6) Work within surface waters shall be done “in the dry”, either during periods of low water or behind temporary diversions such as sandbag cofferdams designed and installed in accordance with the “BMPs for Routine Roadway Maintenance”;
- (7) Dredged materials shall be placed out of RSA 482-A jurisdiction;
- (8) All work shall be completed in accordance with RSA 483-B, the Comprehensive Shoreland Protection Act (“CSPA”);
- (9) No work shall be done:
- a. In or adjacent to municipally-designated prime wetlands;
 - b. Within $\frac{1}{4}$ mile of a New Hampshire river designated pursuant to RSA 483; or
 - c. In bogs, marshes, tidal wetlands, undisturbed tidal buffer zone, or sand dunes;
- (10) A copy of the completed notification form shall be posted in a prominent location at the worksite prior to initiation of work at the worksite; and

(11) The activity sponsor shall comply with all other requirements as set forth in the “BMPs for Routine Roadway Maintenance.”

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7856, eff 3-21-03

PART Wt 304 APPROVAL CONDITIONS

Wt 304.01 Conditions Specified on Permit. Project approval by the department shall be subject to conditions as specified on the permit. The department shall impose conditions, as required, to assure that the project's impacts are minimized. In addition to permit conditions, the conditions set forth in Wt 304 shall be complied with as applicable.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.02 Rock Removal. Rocks removed from the lake bed shall be placed out of the department's jurisdiction, or in the lake with at least 10 feet of water depth over the deposited rocks, unless another use is specifically permitted.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.03 Timing of Projects. The department shall place time limits on a project activity as a condition when the environmental impact of a project is reduced by doing so. For example, the department places conditions on dredging projects which require that the project be conducted either during drawdown or to a certain time period to account for spawning, fishery migration, and to decrease the degradation of the water quality.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.04 Setback From Property Lines.

(a) The department shall limit the location of a project to at least 20 feet from an abutting property line or imaginary extension thereof over surface water unless it receives written agreement from the affected abutter concurring with any impact that may result relative to the abutter's interests.

(b) The department shall increase the setback if it finds that the proposed location represents a danger to other waterfront activities, a navigation hazard, or interferes with an abutter's access to or use of his property.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.05 Logging Operations.

(a) All skid trails, truck roads and log landings shall be located far enough from streams or ponds so that waterborne soil particles will settle out before reaching the streams or ponds.

(b) Skid trails and truck roads shall be laid out using appropriate erosion control devices, as outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April 1996, so that the grade approaching a stream or pond is broken, and surface water is dispersed. Crossings of streams and wetlands shall be kept to a minimum and shall be located to minimize impact in accordance with Wt 302.04(b) and (c).

(c) Culverts, bridges, pole fords or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April 1996, except when road and stream banks are sufficiently frozen to avoid rutting or destabilization. Said crossings shall be removed when logging is completed in the area serviced by the crossing. Corduroy crossings at locations where there is no defined channel may be left in place. Corduroy crossings means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

(d) All permanent crossings on truck roads shall be adequate to handle a 25-year flood, the volume of flood that statistically would occur once in 25 years.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 304.06 Erosion and Siltation Control Measures.

(a) Erosion and siltation control measures shall be installed prior to start of work, shall be maintained, and shall remain in place during construction until all disturbed surfaces are stabilized.

(b) Erosion and siltation control shall be appropriate to the size and nature of the project, and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.

(c) A coffer dam or a curtain of a non-porous material shall be used to enclose a dredging project conducted in a marsh, lake, pond, stream, river, creek or along the shoreline of other surface waters.

(d) Construction or modification shall not cause violations of surface water quality standards, in accordance with Env-Ws 1700.

Source. (See Revision Note at chapter heading for Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03

Wt 304.07 Culverts. Embankments shall have appropriate slope protection adjacent to culverts such as concrete or stone headwalls or rip-rap where flowing water conditions exist.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 304.08 Beaches. The size of a new beach serving a single residence shall not exceed 900 square feet. No new private beach shall utilize more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet of the applicant's contiguous shoreline. Replenishment of existing beaches shall be limited to one replenishment in a 6 year period.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97

Wt 304.09 Subdivisions.

(a) Plans submitted with a wetlands application associated with a proposed subdivision shall indicate the boundaries of all wetlands and surface waters, the footprint of all proposed impacts, existing and proposed topography, and the location of all proposed lot lines. Plans shall be stamped by a licensed land surveyor or a professional engineer pursuant to RSA 310-A, and parties responsible for the wetlands delineation shall be recorded on the plan.

(b) The plans for major project subdivisions shall have wetlands classifications clearly indicated in accordance with Wt 301.02.

(c) There shall be no further wetlands impact for lot development on all subdivision approvals. If the approval is for a single phase of a multiphase subdivision, the applicant shall provide a master plan identifying all wetlands on the property, and conceptual layout for future phases of development.

(d) Permits for subdivisions of four or more lots shall not be effective until the permittee records the permit with the appropriate registry of deeds and a copy of the registered permit has been received by the department.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.10 Shoreline Structures.

(a) Shoreline structures shall meet the criteria of Wt 400.

(b) Permits for structures that provide docking for watercraft shall not be valid until recorded with the appropriate registry of deeds.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 304.11 Dredging Projects.

(a) Dredge spoils shall be disposed of out of the areas under the jurisdiction of the department unless other disposition is specifically permitted. Dredge spoils means material removed as the result of dredging.

(b) Dredging in tidal waters shall be done between November 15 and March 15, and shall not be permitted during a fish migration or larval setting stage of shellfish.

(c) Dredging in freshwater lakes, ponds, streams, brooks, or rivers shall be done so as not to impede fish migrations or interfere with spawning areas for fish.

(d) Dredging shall not disturb contaminated layers of sediment, unless specifically identified and permitted with protective conditions.

(e) Dredging projects in tidal waters shall be designed to ensure that there is no disruption of tidal flushing. Tidal flushing means the influx or outflow of water which is associated with the ebb and flow of the tide.

(f) Appropriate controls, such as cofferdams, siltation curtains, or non porous curtains, shall be used to contain turbidity.

(g) Dredged material to be stockpiled in uplands shall be dewatered in sedimentation basins lined with siltation and erosion controls, and located outside jurisdiction to prevent water quality degradation.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03

Wt 304.12 Filling Projects.

(a) Fill shall be clean sand, gravel, rock, or other suitable material, and shall not contain material not approvable by the department.

(b) Limits of fill shall be marked by construction fence or equivalent prior to commencement of work to assure that fill does not spill over into adjacent wetlands or surface waters.

(c) Slopes shall be immediately mulched or otherwise stabilized to prevent erosion into adjacent wetlands or surface waters.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 304.13 Utility Crossings.

(a) Crossings of surface waters or wetlands by utilities shall be kept to a minimum and shall be located to minimize impact in accordance with Wt 302.04.

(b) The width of the impact shall be kept to that necessary for safe operation of machinery and safety of workers. Supplies and spoils shall not be stockpiled in wetlands. Spoils means the material that is removed as the result of dredging.

(c) Mats shall be used when their use will reduce the impact on the wetland.

(d) Projects shall not endanger navigation, recreation or commerce of the general public.

- (e) Siltation control devices shall be used in accordance with Wt 304.06 as appropriate.
- (f) Crossings shall be restored to natural grade, stabilized, and replanted with native vegetation.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 304.14 Gold Mining and Dredging.

- (a) Power equipment for gold mining and dredging shall be limited to 5 horsepower and shall not have any fuel, oil, or hydraulic leaks.
- (b) Suction dredges shall be limited to 4-inch diameter intake nozzle.
- (c) Sluice and rocker boxes shall be limited to 10 square feet.
- (d) Use of mercury or chemicals for extraction shall be prohibited.
- (e) Streams shall not be dammed or altered.
- (f) Written permission from the landowner shall be obtained by the applicant before dredging.
- (g) Work shall be confined to the beds of streams with no disturbances to the banks adjacent to waters of the state.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #5549, eff 1-5-93; ss by #6498-B,
eff 4-23-97

Wt 304.15 Coffer Dams. Cofferdams and other temporary water control devices shall be removed upon completion of the project.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6498-B, eff 4-23-97

Wt 304.16 Alternative Considerations. The department shall waive any of the criteria of Wt 300 provided all of the following conditions are met:

- (a) The applicant has provided a reasonable alternative, and has demonstrated that the alternative is applicable to the proposed action or site.
- (b) The department finds that the alternative will not result in an increased environmental impact relative to the method normally required by this part.
- (c) The department makes a specific finding indicating the rule being waived and its reason for doing so.
- (d) The criteria involved are not mandated by the statute.

Source. (See Revision Note at chapter heading for Wt 300)
#5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96,
EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

CHAPTER Wt 400 SHORELINE STRUCTURES

PART Wt 401 STATEMENT OF PURPOSE AND EVALUATION

Wt 401.01 Purpose.

(a) The purpose of this chapter is to protect the public trust, and other interests of the state of New Hampshire, by establishing requirements for the design and construction of structures in order to prevent unreasonable encroachment on the surface waters of the State.

(b) To preserve the integrity of the surface waters of the state all structures shall be constructed so as to insure safe navigation, minimize alterations in prevailing currents, minimize the reduction of water area available for public use, avoid changes in subsurface conditions that would be deleterious to fish and wildlife habitat, and avoid changes in water movements that might cause erosion to abutting properties.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by
#6498-B, eff 4-23-97

Wt 401.02 Evaluation. In addition to the requirements of this chapter, evaluation of applications for shoreline projects shall be subject to the applicable requirements of Wt 300.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by
#6498-B, eff 4-23-97

PART Wt 402 DESIGN AND CONSTRUCTION CRITERIA

Wt 402.01 Configuration. Approvable configurations for all docks located on lakes, ponds, rivers, and streams shall include:

(a) A standard configuration that is narrow, rectangular, and:

- (1) If in a lake or pond, erected perpendicular to the shoreline; and
- (2) If in a river or stream, erected parallel to the bank; and

(b) Nonstandard configurations shaped like the letters L, T, F and U, when the applicant, establishes through documentation that:

- (1) The standard configuration would cause a safety hazard due to wind, other weather conditions, or other natural conditions such as water depth unique to the property;
- (2) The nonstandard configuration chosen for the dock provides the least environmental impact on shoreline and water body; and

- (3) The nonstandard configuration does not interfere with boat traffic safety.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #3075, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 402.02 Dimensions.

- (a) Approvable standard dimensions for a dock shall not exceed the following dimensions:

- (1) In lakes and ponds of 1,000 acres or more:

- a. For seasonal docks, a deck width of 6 feet and deck length of 40 feet, measured from normal high water mark; and
- b. For permanent docks, a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

- (2) In lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

- (3) In rivers and streams, for seasonal docks a deck width of 6 feet and deck length of 40 feet, measured along the shoreline.

- (b) The dimensions in (a) above may be exceeded when the department determines, based on information provided by the applicant that:

- (1) Application of the standard dimensions would represent a safety hazard due to wind or other weather conditions;
- (2) The property has a unique physical hardship, such as, insufficient water depth, not shared generally by nearby properties, that requires larger dimensions;
- (3) The applicant has a permanent disability that requires larger dimensions in order to safely use the water; or
- (4) Exception from the standard maximum dimensions by use of clustering of structures in one location would result in less environmental impact to the shoreline and water body than would standard dimensions.

- (c) For a property with less than 75 feet of water frontage, docks or piers shall be no longer than 4 feet by 24 feet, in accordance with Wt 402.13.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 402.03 Setbacks. All docks shall be located at least 20 feet from any abutting property line or imaginary extension of the property line over surface water, unless the affected abutter provides a written

statement acknowledging the dock location and accepting any potential impact resulting from such placement notarized pursuant to RSA 482-A:3, XIII.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7988, eff 11-21-03

Wt 402.04 Seasonal Docks.

(a) A seasonal dock shall be:

- (1) Designed to be installed at the beginning and removed at the end of the boating season;
- (2) Removed from the water for a minimum of 5 months of every calendar year; and
- (3) Designed and placed in the water so as not to obstruct navigation.

(b) In order to qualify for permit by notification under Wt 506, seasonal docks on rivers and streams shall, in addition to the requirements in (a) above:

- (1) Be located on a property having at least 75 feet of shoreline frontage;
- (2) Be the only structure on the property's shoreline frontage;
- (3) Conform with the standard configuration set forth in Wt 402.01(a); and
- (4) Conform with the standard dimensional criteria set forth in Wt 402.02(c).

(c) Seasonal docks, once permitted, shall require no further action unless there is a change in size, location, or configuration.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 402.05 - RESERVED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; rpld and rsvd by #7988, eff 11-21-03

Wt 402.06 Permanent Piers.

(a) A piling pier shall be the least impacting alternative of permanent dock construction and therefore when the conditions cited in Wt 402.05(c) exist, a piling pier shall be used wherever practicable.

(b) All applications for permanent installations shall indicate that reasonable investigations have been undertaken to determine the impossibility of driving pilings before alternate construction methods shall be approved.

(c) Such investigations may include trial driving by commercial equipment, probings and experience in construction of adjacent wharves or docks.

(d) The minimum spacing for pile bents shall be 12 feet center to center.

(e) After an applicant has demonstrated that pilings cannot be driven and that a seasonal structure cannot be maintained on the frontage, a crib dock shall be approved.

(f) The maximum size of cribs for water depths of up to 6 feet shall not exceed 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level.

(g) The crib itself shall be of timber, prefabricated concrete, or other approved members securely fastened together and of such size and spacing necessary to completely contain the stone ballast or other fill material.

(h) The side dimensions of cribs may be increased one foot for every additional foot of water depth above 6 feet. The minimum clear spacing between cribs shall be 12 feet.

(i) Special designs such as caissons, concrete supports, or prefabricated cofferdams are of a highly specialized nature and shall be considered on an individual basis by the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97

Wt 402.07 Breakwaters.

(a) Breakwaters shall be considered major projects pursuant to Wt 303.02.

(b) Breakwaters shall only be approved when an applicant establishes that the following requirements are met:

- (1) The breakwater is located in lake Winnepesaukee;
- (2) The proposed site for the breakwater is exposed to a single radial fetch of at least 4 miles between compass headings 300 and 330 degrees as measured from true north, as illustrated in a map of Lake Winnepesaukee showing areas that meet these criteria, in Appendix A, of which larger copies are available at the wetlands bureau or in the bureau's website;
- (3) The breakwater is located in an area with no significant sand migration;
- (4) The property associated with the breakwater contains a minimum of 100 feet of shoreline frontage pursuant to Wt 101.76; and

- (5) The breakwater is designed in accordance with the design and construction criteria in Wt 402.07(d) through (l).
- (c) When the applicant meets all requirements in paragraph (b) above except for subparagraph (2), the department shall approve the breakwater provided:
- (1) The applicant documents the occurrence of 2 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed breakwater on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15;
 - (2) The applicant provides documentation, including:
 - a. Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or
 - b. Written site measurements completed during the relevant period and verified as accurate by department staff; and
 - (3) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4 hour periods.
- (d) Construction shall be of stone, concrete, wood, or other inert materials consistent with the individual conditions of each site.
- (e) Breakwaters, when measured at normal full lake elevation, shall have:
- (1) No point more than 50 feet from the natural shoreline; and
 - (2) A total length of no more than 70 feet.
- (f) The approved configuration for breakwaters shall be the least impacting alternative of breakwater construction for that site.
- (g) No portion of the breakwater, including any portion underwater, shall be placed within 20 feet of an abutting property line or its imaginary extension into the water.
- (h) No stockpiling of rocks shall be allowed in jurisdiction unless the applicant documents that the limited and difficult access to the site precludes stockpiling outside of jurisdiction and stockpiling is temporary.
- (i) Rocks from frontage may only be used as a source of breakwater material when removed from another structure on the frontage for the purpose of constructing the breakwater.
- (j) Toe of slope shall be 1:1½, rise to run, or greater.
- (k) Breakwaters shall have an irregular face to diffuse wave activity.
- (l) Applicants for breakwaters shall provide the following documentation in plan or cross section:
- (1) Toe of slope dimensions;
 - (2) The dimensions visible at normal high water level;
 - (3) The direction of prevailing wave activity;
 - (4) A minimum gap of 6 feet between the breakwater and shoreline;

- (5) A reference line identifying the 50 foot distance from the shoreline;
- (6) All associated docking structures;
- (7) Construction sequence; and
- (8) Cross-sections showing:
 - a. The breakwater height;
 - b. The breakwater slope;
 - c. Normal high water level; and
 - d. A list of construction materials.

(m) The owner of a breakwater that causes significant adverse effects on abutting property owners or on public use of the water shall be responsible for modifying the breakwater so as to eliminate such adverse effects. If modification is impossible or ineffective, the owner of the breakwater shall remove the breakwater.

(n) Breakwaters shall not exceed 3 feet above normal full lake elevation, and shall not exceed 3 feet in width at the highest point of the structure.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7072, eff 8-13-99; amd by #7303, eff 6-8-00

Wt 402.08 Canopies. Canopies shall be constructed so as not to obstruct views from adjacent property or interfere with boating or swimming safety. The fabric covering of a canopy shall be removed from locations over surface waters during seasons of non-use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 402.09 Structures Disallowed.

- (a) Boathouses located in or over the waters shall not be approved.
- (b) A boathouse located over a dredged inlet within the property of the applicant shall not be approved unless the applicant has shown through data supplied to the department, that the following conditions have been met:
 - (1) The proposed construction shall not adversely impact the stability of the shoreline;
 - (2) The proposed construction sequence and techniques shall prevent water quality degradation;
 - (3) The proposed construction shall ensure that construction is performed in such a manner so as to prevent adverse impact to existing movements of currents or sediment along the shore;

- (4) Alternative docking and storage solutions with less environmental impact do not exist; and
- (5) The proposed construction shall not impact wetlands, streams or similar areas.

(c) Structures over the waters shall not be allowed for the transfer of any activities usually associated with land, including, but not limited to sunbathing and picnicking.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.10 Stairways. Stairways for access to or from legally constructed docks shall be allowed as part of the dock permitting process, provided:

- (a) The stairway width does not exceed 6 feet; and
- (b) Construction over the bank does not require regrading or recontouring.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; rpld by #5740, eff 11-23-93; ss by #7158, eff 12-17-99

Wt 402.11 Maintenance. All structures constructed under these criteria shall be maintained. Maintenance shall be such that the structure shall conform to reasonable safety standards. Failure to so maintain a structure in a safe condition shall be considered a violation of these rules.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.12 Exception. - REPEALED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; rpld by #4038, eff 4-10-86

Wt 402.13 Frontage Less Than 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values and provide sufficient area for construction of facilities, docks or piers permitted on property with less than 75' of water frontage shall be no larger than 4 x 24 feet.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90;
EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 402.14 Frontage Over 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values, provide sufficient area for construction of facilities, provide adequate area for boat maneuvering, and protect health, safety, and general welfare, there shall be a minimum of 75' of water frontage on the property for the first two-slip structure, and an additional 75' of water frontage on the property for each additional boating slip or securing location on a structure for non-commercial use. This section shall not be interpreted to prevent construction of a pier on lots with less than 75' of frontage as provided in Wt 402.13.

Source. #3075, eff 7-26-85; ss by 4038, eff 4-10-86; ss by
#5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 402.15 Exceptions To Frontage Criteria. The standards in Wt 402.13 and 402.14 shall be waived when evidence has been provided, in writing by the applicant, that: application of those standards would represent a hazard due to wind or other weather conditions, or that the property has a hardship requiring the exception, or that the sole practical method of transportation to the property is by boat, or that the applicant's use of the waters is in the public interest, or that the construction has been modified to meet the considerations contained in Wt 401.02, 402.13, and 402.14.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90;
EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 402.16 Commercial Use - Municipal Review. Any new docking facility or additional docking or similar improvement, excluding repairs, or replacements without expansion, that has any portion under commercial use shall comply with all local land-use controls for marinas, or appropriate non-residential land-use classification. Said permit, approval, or letter from the applicable local land use board or board of selectmen indicating that a permit is not required under local regulations shall be received prior to decision by the department. Said local regulations shall not restrict the sole and exclusive authority of the state to permit construction over, or dredge and fill in great ponds or state owned water bodies. If a municipality forwards a denial or does not respond to the department, the applicant may request a public hearing to waive the provisions of this section.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by
#6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.17 Marinas - Design Standards.

(a) Applicants for marina construction or expansion shall provide the department with evidence showing compliance with the following design standards:

(1) All marinas shall be designed to minimize visual impact, to avoid damage to the environment due to leakage or spills of fuels, lubricants, waste products, or other pollutants, and shall not represent a hazard to navigation, or interfere with abutting property values.

(2) The standard for marinas shall be one slip for every 25' of shoreline. More slips shall be permitted if the marina is enclosed by land of the applicant, or other evidence is provided to the department which indicates that the increase is in the public interest. High demand for slips shall be insufficient to establish a public interest. If evidence is provided which would show that the project would pose a navigational hazard, fewer slips shall be permitted.

(b) Applicants for marina construction or expansion shall provide the department with plans showing the following:

(1) Designated wash areas for seasonal vessel cleaning;

(2) Storm water runoff and treatment designs;

(3) Location of pumpout facility;

(4) Location of abrasive blasting, painting operations, hull sanding; and

(5) Location and disposal method for oil or other waste products.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.18 Contiguous Frontage. All frontage considered in the application of Wt 402.13, 402.14 and 402.17 shall be contiguous and owned by the same person.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97

Wt 402.19 Ownership.

(a) An applicant for a shoreline structure defined as major shall be the owner in fee of the affected frontage, unless the applicant has leased the property from the state pursuant to RSA 228:57-a.

(b) If the applicant leases the property from the state pursuant to RSA 228:57-a, the applicant shall:

(1) Provide a copy of the lease to the department with the application; and

(2) Inform the department of any changes in the status of the lease, whether such changes occur while the application is pending or after a permit has been issued.

(c) If the lease does not explicitly state that the applicant may place a shoreland structure defined as major on the leased property, the applicant shall provide written authorization for placement of the proposed structure from the New Hampshire department of transportation.

(d) The recipient of a permit to construct a shoreline structure(s) on property leased from the state pursuant to RSA 228:57-a shall:

(1) At the permittee's own cost and expense, remove the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake within 30 days of the earlier of:

a. The termination or expiration of the dock permit; or

b. A default under, termination, or expiration of the state lease; and

(2) Restore the lakebed and the leased state land to its original condition within 30 days of removing the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake.

(e) No permit shall be effective unless approved by the governor and executive council.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #8067, eff 4-2-04

Wt 402.20 Deed Restriction.

(a) Upon receipt of a permit, the applicant for a major docking facility in public waters shall file a deed restriction with the appropriate registry of deeds which limits the use of the docking facility to permitted conditions and dedicates an amount of shore frontage to that facility.

(b) The applicant shall provide a copy of the recorded deed restriction to the department.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.21 Registration. All permits for docking structures shall be recorded by the applicant with the appropriate registry of deeds in accordance with RSA 482-A:3, VI, and the applicant shall provide the department with a copy of the stamped document.

Source. #5740, eff 11-23-93; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 402.22 Modification of Existing Structures. The department shall not approve any change in size, location or configuration of existing structures unless the applicant demonstrates that and the department

finds the modification to be less of an environmental impact or provides for less boat slips and less construction surface area over public submerged lands than the current configuration.

Source. #5740, eff 11-23-93; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 403 CRITERIA FOR INTAKE AND OUTFLOW STRUCTURES

Wt 403.01 Intake Structures. An applicant shall demonstrate that intake structures shall meet the following criteria:

- (a) Inflow shall not lower water levels so that the habitat of finfish, crustacea or shellfish is harmed.
- (b) Inflow shall not cause scouring, or endanger vegetation, finfish, crustacea, shell fish or wildlife.
- (c) The structure shall not endanger navigation, recreation or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 403.02 Outflow Structures. An applicant shall demonstrate that outflow structures shall meet the following criteria:

- (a) Outflow shall not cause scouring, or endanger vegetation, finfish, crustacea, shellfish or wildlife.
- (b) The structure shall not endanger navigation, recreation or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 403.03 Dikes, Tide Dams and Tide Gates. An applicant shall demonstrate that projects for dikes, tide dams, and tide gates shall meet the following criteria:

- (a) Flooding, loss of salinity, or de-watering shall not damage or destroy indigenous hydrophytic vegetation or habitat of finfish, crustacea, shellfish, or wildlife.
- (b) Adequate passage and rate of flow shall be maintained at appropriate times to allow migration of fish and other marine life.
- (c) The conveyance of runoff and flood waters shall not be prevented.
- (d) Projects shall not cause the permanent inundation of tidal wetlands.
- (e) Projects shall not interfere with the normal ebb and flow of waters in tidal wetlands.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

PART Wt 404 CRITERIA FOR SHORELINE STABILIZATION

Wt 404.01 Least Intrusive Method. Shoreline stabilization shall be by the least intrusive but practical method.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 404.02 Diversion of Water. Diversion of stormwater run-off often provides effective and low maintenance erosion protection, and shall be utilized to the maximum extent practical.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 404.03 Vegetative Stabilization.

(a) Natural vegetation shall be left intact to the maximum extent possible. If space and soil conditions allow, unstable banks shall be cut back to a flatter slope, seeded and replanted with native trees and shrubs.

(b) If space relative to the highest observable tide line, water turbulence, and soil conditions allow, vegetation of existing sand beach or dunes, or construction of vegetated sand dunes shall be required.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

Wt 404.04 Rip-rap.

(a) Rip-rap applications shall be considered only where the applicant demonstrates that anticipated turbulence, flows, restricted space, or similar factors render vegetative and diversion methods physically impractical.

(b) Applications for rip-rap shall include:

- (1) Designation of a minimum and maximum stone size;
- (2) Gradation;
- (3) Minimum rip-rap thickness;
- (4) Type of bedding for stone;
- (5) Cross-section and plan views of the proposed installation;
- (6) Sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline; and
- (7) A description of anticipated turbulence, flows, restricted space, or similar factors that would render vegetative and diversion methods physically impractical.

(c) Applications to use rip-rap adjacent to great ponds, or waterbodies where the state holds fee simple ownership, shall include a stamped surveyed plan showing the location of the normal high water shoreline, and the footprint of the proposed project.

(d) Rip-rap shall be located shoreward of the normal high water shoreline, where practical, and shall not extend more than 2 feet lakeward of that line at any point.

(e) Stamped engineering plans shall be provided as part of any application for rip-rap in excess of 100 linear feet along the bank of a stream or river.

Source. #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97

Wt 404.05 Walls.

(a) The following requirements relative to walls shall apply to nontidal waters:

- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical;

- (2) Applications for walls shall include cross-section and plan views of the proposed installation, and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
 - (3) Walls on great ponds, or waterbodies where the state holds fee simple ownership, shall be located on the shoreward side of the normal highwater shoreline;
 - (4) Applications for walls adjacent to great ponds, or waterbodies where the state holds fee simple ownership, shall include a stamped surveyed plan showing the location of the normal high water shoreline, and the footprint of the proposed project.
- (b) The following requirements relative to walls shall apply to tidal waters:
- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical. Wherever sufficient room, slopes should be cut back to eliminate a need for a wall;
 - (2) Applications for walls shall include cross-section and plan views of the proposed installation, and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
 - (3) The face of a project shall be of angular texture to minimize reflected wave energy;
 - (4) Only the minimal amount of fill shall be allowed to achieve stability of the structure;
 - (5) Projects shall include weepholes to allow seepage of groundwater and to promote slope stability;
 - (6) Projects shall not reflect or re-direct currents or wave energy towards adjacent wetlands or structures, or contribute to erosion; and
 - (7) A seawall shall be recurved to reflect wave energy where space limitations allow. Recurved means wall construction which is concave on the seaward side.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97

CHAPTER Wt 500 PERMIT PROCEDURE

PART Wt 501 PROCEDURE TO APPLY FOR REGULAR APPLICATIONS

Wt 501.01 Applications for Regular Review.

(a) Applications shall be submitted in a complete manner as specified in Wt 300, 400, 500 and by RSA 482-A before department action.

(b) Five copies shall be submitted. Photo copies shall be acceptable.

(c) At the time of filing, the applicant shall notify in writing all abutters as specified by RSA 482-A, of the application to dredge, fill, or construct a structure in waters and/or wetlands. This notification shall not be required for logging operations, projects in utility rights-of-way, or public highway construction.

(d) By signing the application, the applicant shall:

(1) Certify that abutters have been notified in writing; and

(2) Authorize the municipal conservation commission to inspect the site of the proposed project.

(e) All 5 copies of the application and 5 copies of the data specified in Wt 501.02 shall be presented to the town/city clerk of the municipality where the proposed project is located. All 5 copies shall be signed and dated by the town/city clerk. The clerk shall retain and distribute the 5 copies pursuant to RSA 482-A:3, I.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 501.02 Additional Data.

(a) Along with the completed application submitted to the department, the applicant shall supply at least the following:

(1) A copy or tracing of a town tax map showing the property of the applicant, the location of the proposed project on the property, and the location of properties of abutters with each lot labeled with the abutter's name(s) and address(es);

(2) A drawing or drawings showing:

a. An overview of the property and proposed impact areas in relation to the property lines;

b. The scale, if any, used on the plan;

c. If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;

d. A labeled north-pointing arrow to indicate orientation;

e. A legend that clearly indicates all symbols, line types, and shading used on the plan;

- f. The location of wetlands delineated in accordance with Wt 301.01, shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;
 - g. The location of the 100-year floodplain, if applicable to the proposed project;
 - h. If the topography is to be permanently altered, the existing and proposed topography, including a reference elevation;
 - i. Labeled and lightly shaded or stipled areas indicating limits of all temporary and permanent impacts in jurisdiction, including wetlands, surface waters and their banks, areas within 100 feet from the highest observable tide, and sand dunes;
 - j. The location of any wetland delineation observation plots if required by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January, 1987);
 - k. Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated as necessary;
 - l. If the project proposes the subdivision of land, information required by Wt 304.09; and
 - m. If the project involves construction of a shoreline rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Wt 404;
- (3) Dated, labeled photograph(s) mounted on 8 ½" x 11" sheets depicting portions of wetland, shoreline, or surface waters where proposed impact will occur, and showing all existing structures;
- (4) A copy of the appropriate US geological survey map showing the location of the property and proposed project;
- (5) A narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work; and
- (6) Where preservation of an upland buffer is being proposed as compensatory mitigation:
- a. A report that documents current property conditions;
 - b. A copy of the proposed conservation easement language, including a plan showing the location of the proposed conservation area boundaries; and
 - c. A statement from the proposed holder of the conservation easement indicating that the proposed holder will accept the easement, as identified in RSA 477:47.
- (b) In addition to the information required in (a) above, for projects in tidal wetlands, the applicant shall supply the following:
- (1) The boundaries of the tidal buffer zone, edge of salt marsh vegetation, and sand dunes in the project vicinity shown on the drawing required in (a)(2) above;
 - (2) If the proposed project is located within 200 feet of any Federal Navigation Project, the distance between any structure(s) associated with the proposed project and the Federal Navigation Project site; and
 - (3) The name of the individual who conducted the delineation on the property.

(c) In addition to the information required in (a) above, for projects affecting surface water shoreline, the applicant shall supply the following:

- (1) The general shape of the shoreline including the length of frontage and either:
 - a. The full waterbody elevation; or
 - b. The highest observable tidal line for tidal waters;
- (2) The footprint of all existing and proposed structures on the property;
- (3) The intended use of each proposed structure; and
- (4) The distance from existing and proposed work to abutting property lines.

(d) In addition to the information required in (a) above, for projects within the protected shoreline, as defined by RSA 483-B, the applicant shall supply the following information:

- (1) The reference line;
- (2) The location of all existing structures between the primary building line and the reference line;
- (3) The location of all proposed structures; and
- (4) The total disturbed area within the protected shoreline.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7896, eff 5-22-03; amd by #8062, eff 3-13-04

Wt 501.03 Identification of Applications. The bureau shall initiate and maintain a file on each application. This file shall be maintained for a minimum of 4 years.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6498-B, eff 4-23-97

PART Wt 502 GENERAL CONDITIONS APPLICABLE TO ALL PERMITS

Wt 502.01 Duration of Permit. Permits issued shall have a duration of 5 years except as follows:

(a) Public transportation projects that exceed the limits of the US Army Corps of Engineers' New Hampshire programmatic general permit shall receive one permit extension, to a total of 10 years, provided the applicant:

- (1) Receives an individual federal permit from the US Army Corps of Engineers; and

(2) Requests such an extension in writing from the wetlands bureau prior to the expiration of the original permit.

(b) Minimum impact forestry notifications issued in accordance with RSA 482-A:3, V shall be valid until:

(1) July 1 of the current calendar year if issued before April 1; or

(2) July 1 of the following calendar year if issued after April 1.

(c) Gold Dredge Permits issued in accordance with RSA 482-A:3, XI expire at the end of the calendar year in which they are issue, as set forth in the statute.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7048, eff 6-29-99

Wt 502.02 - RESERVED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

Wt 502.03 Transferability.

(a) The department shall submit to governor and council all requests for transfer of permits for major projects that involve structures in great ponds or public-owned water bodies in the manner prescribed for permits under RSA 482-A:3, II.

(b) Permits shall be issued to land owners on whose land the project is located or attached or to party(ies) having financial or other legal interest in the property when the permitted project is proposed to be performed after transfer of title or when legal authority has been granted. For projects which have not been completed and when ownership or legal authority is to be changed, the department shall transfer the permit after receipt of a written request by the new owner or legal authority unless there is a pending enforcement case on the file. If transfer is approved, the new permittee shall be advised of all conditions, limitations, and special considerations pertinent to the approved project.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #4806, eff 4-27-90; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 502.04 Filing Certificate of Compliance. The applicant shall file a completed certificate of compliance with the department upon completion of the work authorized under a permit. The certificate of compliance shall include the permit number, date of permit issuance, and the date the work was completed.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 502.05 Repair or Rebuilding Structures.

(a) An application and permit shall be required prior to repairing, replacing or rebuilding any portion of a structure located below the water surface at time of such repair or replacement. Structures requiring an application and permit shall include but not be limited to pilings, cribs and breakwaters.

(b) The applicant shall provide proof that the structure the applicant is proposing to repair, replace, or rebuild, has been functional, intact in its current shape, dimensions, and configuration within 5 years of the proposed work and that it would be considered grandfathered as defined in Wt 101.38.

Source. #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97

Wt 502.06 Permit Acceptance. All permits for construction shall be signed by the applicant and the principal contractor hired to build or install the project prior to start of construction. Permits shall not be valid until signed as provided above.

Source. #3076, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97

PART Wt 503 EMERGENCY PROCEDURES

Wt 503.01 Emergency Approvals.

(a) Emergency work shall be permitted by the bureau administrator when a threat to public safety, or public health exists or significant damage to private property is imminent and the event causing the emergency occurred within 5 days of the request for emergency approval. Emergency approval shall be limited to temporary stabilization of the site or mitigation of the immediate threat. A record of such approval containing description of emergency, work to be performed, and schedule of work shall be made.

(b) During a general or local disaster, work without a permit shall be permitted. All such work shall be reported to the department including description of work done.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 503.02 Action After Emergency. Description of all work performed during emergencies, except for those projects classified minimum impact, shall be filed in lieu of applications to describe the work performed. Applications as required under Wt 501 shall be made for any permanent repairs, restoration or other activities proposed to be conducted.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 504 SMALL MOTOR DREDGING PERMITS

Wt 504.01 Persons Requiring a Permit.

(a) Any person operating a small motor dredge for the purpose of recreational mineral dredging shall have a permit posted in the immediate vicinity of the dredging operation.

(b) Each person 18 years of age or older who is participating in recreational dredging shall have his or her own permit.

(c) Participants who are 17 years of age or younger shall be accompanied by an adult who possesses a valid permit.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97

Wt 504.02 Application Requirements.

(a) As part of the application, the applicant shall provide the department with:

- (1) A check or money order for the filing fee;
- (2) His/her name, address, and telephone number;
- (3) A signed statement certifying that he/she has read, and will comply with Wt 304; and
- (4) Proof of New Hampshire residency, if claimed.

(b) Applicants claiming New Hampshire residency shall provide a photocopy of their New Hampshire driver license, or New Hampshire nondriver ID, and shall clearly print their license or ID number.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 504.03 Conservation Commission Review. The conservation commission intervention review of RSA 482-A:11, III shall not apply to this part as the permits are not specific to any town.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97

Wt 504.04 Dredging Criteria. Recreational dredging operations shall be conducted in accordance with the criteria set by Wt 304.14.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97

PART Wt 505 EXPEDITED MINIMUM IMPACT PERMITS

Wt 505.01 Application Completeness Requirements. As part of the expedited minimum impact application, except for seasonal docks processed under Wt 506, the applicant shall provide the department with:

- (a) Applicant name, mailing address, and telephone number;
- (b) Location of proposed project;
- (c) \$50.00 application fee;
- (d) Identification of appropriate minimum impact provision in Wt 202.03;
- (e) A copy of town tax map showing the location of the proposed project in relation to abutters;
- (f) A list of abutters' names and mailing addresses to cross reference with the tax map;
- (g) A copy of the appropriate US geological survey map with the property and project located;
- (h) An accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on areas in department jurisdiction detailing the precise location of the project;
- (i) Original photos, clearly showing the area to be impacted, mounted on 8 ½" x 11" paper and annotated to explain impact;
- (j) Name of waterbody or wetland where work is proposed;
- (k) Identification of the type of landform to be affected as follows:
 - (1) Salt marsh;
 - (2) Tidal water;
 - (3) Sand dune;
 - (4) Bog;
 - (5) Freshwater marsh;
 - (6) Swamp;

- (7) Wet meadow;
- (8) River;
- (9) Perennial stream;
- (10) Seasonal stream;
- (11) Lake;
- (12) Upland tidal buffer zone; and
- (13) Other;
- (l) A brief description of the project, outlining the scope of work to be performed;
- (m) A signed statement by the applicant certifying that the proposed project meets the conditions and limits of the designated minimum impact rule, as identified in Wt 505.01(d), and that all abutters have been notified;
- (n) A signed statement for minimum impact projects that are submitted for repair or replacement of docking structures under Wt 303.04(v), shall include certification that:
 - (1) The structures have been in existence in the same location, configuration and construction type, and dimensions within the last 5 years;
 - (2) The existing structures have not been abandoned as specified in Wt 101.01 or Wt 303.05(a)(4); and
 - (3) The existing structures would be considered grandfathered in their current condition under Wt 101.40; or
 - (4) The existing structures have been permitted in the same condition under a wetlands permit, and both (n)(1) and (n)(2) apply.
- (o) A signed statement by the town clerk certifying that the applicant has provided certified postal receipts of abutter notification, and that 5 copies of the application and plans have been received and distributed as required by RSA 482-A:3, I;
- (p) A signed statement by the county conservation district, where required by the appropriate minimum impact rule, certifying compliance with all conditions of that rule;
- (q) A signed statement by the municipal conservation commission certifying that the commission:
 - (1) Waives its right to intervene per RSA 482-A:11, III;
 - (2) Recommends approval of the application; and
 - (3) Believes that the application and the submitted plans accurately represent the proposed project.
- (r) The number of linear feet of shoreline frontage for projects located on waterbodies;
- (s) The linear distance of project from abutting property boundaries;
- (t) The type of dock construction;

- (u) The diameter of culvert(s) to be utilized for road or driveway crossings;
- (v) The additional information specified in Wt 303.04(u) for minimum impact agricultural applications;
- (w) Plans for retaining walls, as specified in Wt 404.05(a)(2);
- (x) Specifications and plans for rip-rap, as required by Wt 404.04;
- (y) A statement demonstrating that their proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction in accordance with Wt 302.03.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97;

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99

Wt 505.02 Expedited Review Procedures. Minimum impact projects identified for expedited review, except for minimum impact seasonal docks processed under Wt 506, shall be processed in the following manner:

(a) Applications shall be reviewed by the bureau staff for completeness, compliance with department rules and shall be approved or a notice of deficiency sent to the applicant within 30 calendar days from receipt of an application by the department.

(b) If the proposed project conforms to department rules and applicable laws, the bureau administrator, or his designee shall issue a wetlands permit.

(c) Applications that are incomplete or that do not meet the department rules or applicable laws shall be deemed incomplete and a notice identifying any deficiencies shall be sent to the applicant.

(d) An applicant may proceed with the proposed minimum impact project if the following conditions have been met:

(1) A complete application has been filed in accordance with Wt 505.01 and the application and plans meet the criteria of Wt 202.03, and Wt 302.03;

(2) The department has received the application specified in (1) above, and the bureau has not mailed the notice with noted deficiencies to the person and mailing address listed on the application within 30 calendar days of the department's receipt of that application; and

(3) The applicant follows the conditions set out in Wt 505.03.

Source. #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99

Wt 505.03 Expedited Permit Conditions. The expedited minimum impact permits shall have the following conditions:

(a) Additional expedited minimum impact applications shall be accepted for the subject property for a period of 12 months only if the applicant demonstrates by plan that the additional project(s) are wholly

unrelated or separate from the original application and when considered with the original application are not classified as minor or major.

(b) A permit for repair or replacement of an existing docking structure shall not preclude the department from taking any enforcement action or revocation if the department later determines that these "existing structures" were not previously permitted or grandfathered.

(c) Work authorized shall be carried out such that discharges in spawning or nursery areas during spawning seasons shall be avoided, and impacts to such areas shall be avoided or minimized to the maximum extent practicable during all times of the year.

(d) Work shall be carried out in a time and manner such that disturbance to migratory waterfowl breeding areas and spawning areas shall be avoided.

(e) No fill shall be done to achieve septic setback and no dredging shall take place that would contradict the department of environmental services subsurface bureau rules.

(f) No fill shall be done for lot development.

(g) No fill shall take place in Atlantic white cedar swamps.

(h) Applicants shall be advised that all work carried out prior to receiving a department wetlands permit shall not be covered under the Army Corps of Engineers State Programmatic General Permit issued on June 1, 1992 and amended on October 20, 1992 and amended on February 28, 1994 and may be in violation of federal law.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 505.04 Expedited Repair Contingency.

(a) When the bureau staff has reason to believe that an applicant's existing docking structure as proposed does not meet the criteria of Wt 303.04(v), the applicant shall be required to submit proof as specified by Wt 502.05.

Source. #5904, eff 9-30-94; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 506 PERMIT BY NOTIFICATION

Wt 506.01 Projects Qualifying for Permit by Notification. The following projects shall qualify for the permit by notification process:

(a) The construction or modification of a seasonal pier or wharf, located on a stream or river, that meets the criteria in Wt 303.04(a);

(b) The repair or replacement of an existing retaining wall that meets the criteria in Wt 303.04(c);

(c) Maintenance dredging that meets the criteria in Wt 303.04(k);

- (d) The construction of a temporary cofferdam and other water control devices that meets the criteria in Wt 303.04(l);
- (e) The repair of an existing docking structure that meets the criteria in Wt 303.04(v);
- (f) The excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, that meets the criteria in Wt 303.04(w);
- (g) The maintenance, repair, or replacement of a nondocking structure that meets the criteria in Wt 303.04(x);
- (h) The installation of a culvert, bridge, pole, or rock ford and associated fill to permit vehicular access to a piece of property for a single family building lot or for noncommercial, recreational uses that meets the criteria in Wt 303.04(z);
- (i) The replenishment of an existing beach that meets the criteria in Wt 303.04(aa);
- (j) The construction of an anchoring pad for a seasonal dock that meets the criteria in Wt 303.04(ab);
- (k) The installation of a seasonal boatlift that meets the criteria of Wt 303.04(ac);
- (l) The installation of a personal watercraft lift that meets that criteria of Wt 303.04(ad);
- (m) The installation of a residential utility line that meets the criteria of Wt 303.04(ae);
- (n) Temporary impacts associated with the inspection, maintenance and repair of existing utility lines within an existing utility right-of-way that meet the criteria of Wt 303.04(af); and
- (o) After-the-fact applications shall not qualify for the permit by notification process.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 506.02 Permit by Notification Procedures for Qualifying Projects. A project qualifying for permit by notification under Wt 506.01 shall be processed in the following manner:

- (a) The applicant shall file 5 copies of signed permit by notification forms with the town clerk in the town where the project is to occur;
- (b) The town clerk shall sign all copies, distribute them in accordance with RSA 482-A:3, I and forward one copy by certified mail to the department;
- (c) After filing the completed permit by notification forms with the town clerk, the applicant may proceed with the project:
 - (1) After 10 days, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or
 - (2) After 25 days, unless disqualified from the permit by notification process;
- (d) Once the applicant complies with (c)(1) or (2) above, the applicant shall post the completed and signed permit by notification form at the site prior to commencing the project;
- (e) If the department determines that a permit by notification form is incomplete, the department shall send a notice of incompleteness to the applicant and the local governing body identifying any deficiencies and notifying the applicant that the applicant shall not proceed with the project;

(f) If the applicant provides the department and local governing body with the information necessary to correct all deficiencies cited in Wt 506.02(f) above within 20 days following issuance of the written notice of incompleteness, the applicant may proceed with the project as follows:

- (1) After 10 days following receipt of the information by the department, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or
- (2) After 25 days following receipt of the information by the department, unless the project is disqualified from the permit by notification process;

(g) If the applicant fails to provide the department and local governing body with the information necessary to correct all deficiencies cited in Wt 506.02(f) above, within 20 days following issuance of the written notice of incompleteness, the notice of incompleteness as discussed in Wt 506.02(f) above, shall disqualify the project from the permit by notification process provided the notice states in full the reasons why the project does not qualify for permit by notification review;

(h) Upon disqualification of the project from the permit by notification process, the applicant may refile a completed permit by notification form in accordance with this section, or file a standard or expedited application pursuant to Wt 501 and Wt 505 respectively.

(i) Within 10 days following completion of the project, the applicant shall submit to the department confirmation of completion of the project, by either paper copy or electronically, with dated, labeled, photograph(s), mounted on 8 1/2" x 11" sheets if paper copy, or digital photo(s) if electronic, depicting the areas where the impact occurred.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 506.03 Notification Completeness Requirements for Projects Qualifying for Permit by Notification in Wt 506.01. As part of the permit by notification process for projects classified under Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae) and (af), the applicant shall file with the department:

- (a) The applicant's name, mailing address and telephone number;
- (b) The street address of the proposed project site, if different from the address in (a), above;
- (c) A copy of the appropriate US geological survey map with the property and project located;
- (d) A copy of the town tax map showing the location of the proposed project;
- (e) A sketch plan showing the proposed project, including the following:
 - (1) An overview of the property and proposed impact areas in relation to the property lines;
 - (2) The scale, if any, used on the plan;
 - (3) If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - (4) A labeled north-pointing arrow to indicate orientation;
 - (5) A legend that clearly indicates all symbols, line types, and shading used on the plan;

- (6) The location of wetlands delineated in accordance with Wt 301.01, shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;
 - (7) The location of the 100-year floodplain, if applicable to the proposed project;
 - (8) If the topography is to be permanently altered, the existing and proposed topography, including a reference to elevation;
 - (9) Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated as necessary; and
 - (10) For projects classified under Wt 303.04(l), plans shall be stamped by a licensed professional engineer;
- (f) A written agreement with any abutters as required in Wt 304.04(a), or Wt 402.04 for docks, when work in jurisdiction will occur within 20 feet of the property line or imaginary extension thereof over surface waters;
- (g) Original, dated photos, clearly showing the area to be impacted, mounted on 8 ½" x 11" paper and annotated to explain impact;
- (h) A brief description of the project, outlining the scope of work to be performed, including a narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
- (i) For projects classified under Wt 303.04(z) and Wt 303.04(ae), a sketch plan identified in (e) above, that includes a wetlands delineation, in accordance with Wt 301.01, of the project area, and that is:
- (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
 - (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s);
 - (3) Signed by the landowner acting on his or her own behalf, when the landowner prepares the plan for the development of their primary residence, showing the impacts resulting from such development; or
 - (4) Stamped by a permitted septic system designer, permitted in accordance with RSA 485-A:35.
- (j) An application fee for minimum impact projects as required by RSA 482-A:3, I; and
- (k) A signed statement by the applicant certifying that the proposed project meets the conditions and requirements as identified in Wt 303.04 and Wt 506.04.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03

Wt 506.04 Conditions for Permit by Notification for Qualifying Projects. A permit issued pursuant to the permit by notification procedure for a qualifying project shall have the following conditions:

- (a) The qualifying project shall remain in compliance with all applicable criteria in Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae) and (af) and the conditions listed in Wt 304;

(b) Construction or modification shall be undertaken in compliance with RSA 483-B, the comprehensive shoreland protection act;

(c) For projects classified under Wt 303.04(z) and Wt 303.04(ae) involving stream impacts, the proposed project shall only impact intermittent streams as defined in Wt 101.44.

Source. #7988, eff 11-21-03

PART Wt 507 SEASONAL DOCK NOTIFICATION

Wt 507.01 Qualification for Seasonal Dock Notification. A person may construct or modify a seasonal pier or wharf on any lake or pond without obtaining a permit from the department, provided the project meets the criteria in RSA 482-A:3,IV-a, and the individual notifies the department pursuant to the procedures in Wt 507.02.

Source. #7988, eff 11-21-03

Wt 507.02 Notification Procedures for Qualifying Seasonal Dock Projects. A minimum impact seasonal dock on a lake or pond qualifying for the notification process pursuant to RSA 482-A:3, IV-a shall be processed in the following manner:

(a) The applicant shall submit to the department all information required by RSA 482-A:3,IV-a for a review by the department;

(b) The department shall review the information submitted;

(c) The applicant may proceed with the proposed project, exempt from permitting requirements, if the applicant has filed the information required in Wt 507.03 with the department, and the information submitted meets the requirements established in RSA 482-A:3,IV-a;

(d) If the department determines that the information provided is incomplete, the department shall send a notice of incompleteness to the applicant identifying any deficiencies;

(e) If the applicant fails to provide the information necessary to correct any deficiencies within 20 days following issuance of the written notice of incompleteness, the notice of incompleteness from the department as discussed in (c), above, shall serve to disqualify the project from the notification process provided the notice states in full the reasons why the project does not meet the notification requirements; and

(f) Upon disqualification of the project from the notification process, the applicant may resubmit a notification in accordance with this section, for qualifying seasonal dock projects or, if applicable, submit a permit application using the standard or expedited application process pursuant respectively to Wt 501 and Wt 505.

Source. #7988, eff 11-21-03

Wt 507.03 Notification Completeness Requirements for Qualifying Seasonal Dock Projects. In order for a seasonal dock to qualify for the notification process, an applicant shall submit to the department, on the department's appropriate notification form:

(a) The information required by RSA 482-A:3, IV-a; and

(b) Certification that the applicant intends to meet all project criteria specified in RSA 482-A:3 IV-a, (a) through (i).

Source. #7988, eff 11-21-03

CHAPTER Wt 600 TIDAL WETLANDS

REVISION NOTE:

Document #5185, effective 7-23-91, changed the title of Chapter Wt 600 from Coastal Wetlands to Tidal Wetlands. Doc. #5185 has also repealed Parts 602, 603, 604, 605, and 607. The rules in these parts were amended and incorporated into Chapter Wt 300 by Document #5186, effective 7-23-91. See the revision note at the chapter heading for Chapter Wt 300.

PART Wt 601 DEFINITIONS - REPEALED

REVISION NOTE:

Document #5551, effective 1-5-93, repealed Part Wt 601 entitled "Definitions." Many of the definitions contained in former Part Wt 601 had been earlier amended and incorporated by Document #5536, effective 12-23-92, into Part Wt 101 entitled "Definitions." See revision note at the part heading for Part Wt 101. The prior filings for former Part Wt 601 include the following documents:

#2923, eff 12-10-84
 #4297, eff 7-23-87
 #5028, eff 12-20-90

Please note that some of the rules in former Part Wt 601 were out of effect between 12-10-90 and 12-20-90.

PARTS Wt 602 through Wt 605 - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90; amd by #3077, eff 7-26-85; amd by #4297, eff 7-23-87; ss by #5028, eff 12-20-90; rpld by #5185, eff 7-23-91 (See Revision Note at chapter heading of Wt 600)

PART Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Wt 606.01 Dredge Criteria. - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

Wt 606.02 Fill Criteria.

- (a) Fill shall be distributed in conformance with existing topography.
- (b) Fill shall not cause shoaling.
- (c) Fill shall not increase wave height.
- (d) Fill shall be compatible with existing grain size and distribution.
- (e) Fill shall be staked and measured by the department.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 606.03 Breakwater Criteria.

- (a) Breakwaters shall not hinder or prevent flushing of coastal areas.
- (b) Breakwaters shall not create current or waves that present a danger to small watercraft.
- (c) Breakwaters shall not create nor cause sediment deposits.
- (d) Breakwaters shall meet the criteria of Wt 402.07.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.04 Dikes, Tide Dams, and Tide Gates Criteria. - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-
23-93 (see Wt 403.03)

Wt 606.05 Piers, Docks, Wharves, and Floats Criteria.

- (a) Projects shall be designed such that supporting cribs, piles, and caissons occupy no more than five percent of total volume under the structure at mean high water to allow most wave and current energy to pass through, and prevent deepening of the area.
- (b) Piles and cribs shall not be placed any closer than twelve feet apart.
- (c) Superstructures shall not completely shield the underlying area from direct sunlight.
- (d) All floats shall be anchored, held by piles, or made fast to the shore or dock, to prevent substantial changes in their positions.
- (e) Floats that are not linked to the shore by ramps or piles, but are anchored, shall not exceed 400 square feet.
- (f) All floats and floating structures or sections thereof, shall be positioned waterward of any vegetated wetlands or vegetated shallows.

(g) Piers shall meet the criteria of Wt 402.01, Wt 402.04, Wt 402.05, and Wt 402.06.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.06 Jetty Criteria.

(a) Reserve.

(b) The following shall apply to jetties:

- (1) Jetties shall be the minimum length necessary to reduce shoaling of the inlet;
- (2) Jetties shall be an adequate height to trap sediment completely;
- (3) A system of replenishment shall be designed and maintained to prevent the deepening of down drift areas due to the interruption of longshore sediment drift.
- (4) Jetties shall not prevent proper flushing of coastal areas; and
- (5) Jetties shall meet the criteria of Wt 402.07.

Source. #2923, eff 12-10-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.07 Seawall, Revetment, and Bulkhead Criteria. - REPEALED

Source. #2923, eff 12-10-84; amd by #4506, eff 10-13-88; ss
by #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-
93 (see Wt 404.05)

Wt 606.08 Mooring and Marina Criteria.

- (a) Projects shall be located waterward of wetlands vegetation and vegetated shallows.
- (b) Projects shall not be located in areas where tides, currents, and waves may present a hazard.
- (c) Projects shall not remove amounts of water space in an area from accessibility to water craft.
- (d) Moorings as defined in Wt 101.54 are not within the jurisdiction of the department. Inquiries should be directed to the port authority or harbor master.

- (e) Marinas shall meet the criteria of Wt 402.17.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.09 Pile, Crib, and Caisson Criteria.

- (a) Open piles shall be the least impacting alternative of permanent docking construction.
- (b) Cribs and caissons shall be allowed only when critical need can be proven.
- (c) Crib and caisson supported structures shall be authorized only when the applicant offers clear evidence that alternative constructions would be impractical.
- (d) Cribs and caissons shall not be allowed in areas of vegetation or wildlife, fish, or crustacean habitat.
- (e) Materials used for fill within any crib or caisson shall be of a minimum size that exceeds the largest opening in the walls.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.10 Platform and Rig Criteria. - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

Wt 606.11 Intake and Outflow Structure Criteria. - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-
23-93 (see Part Wt 403)

Wt 606.12 Utility Line, Pole, Tower, and Antennae Criteria.

- (a) Projects shall not endanger finfish, shellfish, crustacea, or wildlife attracted to wetlands areas.
- (b) Projects shall not significantly disturb underground or surface water flow.

- (c) Projects shall not endanger the navigation, recreation, or commerce of the general public.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.13 Boardwalk Criteria.

- (a) Projects shall be elevated such that no area under the structure shall be completely shaded from the sun.

- (b) Superstructures of projects shall be of slatted construction to allow circulation of air and water, and allow the penetration of light.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.14 Trails, Roadways, Access, and Boat Ramps.

- (a) Projects shall be of the minimum size necessary to bear expected vehicular traffic.
- (b) Projects shall be of the lightest construction possible and elevated on piles where possible.
- (c) Access projects shall be temporary.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.15 Boathouses and Shoreline Slips. Boathouses in or over the waters and wetlands and slips dug into the shore shall not be approved.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97

Wt 606.16 Canopies. - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Wt 402.08)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Wt 606.17 Part Taking Precedence. Wt 606 shall supersede Wt 402 when projects are located in coastal wetlands. Projects exceeding or violating these criteria shall not be classified as minimum impact.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97

PART Wt 607 - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5185, eff 7-23-91 (See Revision Note at chapter heading of Wt 600)

CHAPTER Wt 700 PRIME WETLANDS

PART Wt 701 CRITERIA AND EVALUATION

Wt 701.01 Purpose. The purpose of these rules is to provide criteria to municipalities for use to designate wetlands of significant value that are worthy of extra protection because of their uniqueness, fragility and/or unspoiled character pursuant to RSA 482-A:15.

Source. #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97

Wt 701.02 Identification of Wetlands for Consideration as Prime.

(a) All wetlands greater than 2.0 acres in size in the municipality shall be identified. Wetlands smaller than 2.0 acres may be identified and included in the functional ranking.

(b) After wetlands have been identified, the municipality may set threshold conditions for one or more measurable functions, such as size. A wetland that does not meet or exceed the threshold conditions shall be dropped from further consideration unless it can be shown to support a rare species, provide critical wildlife habitat, or have known historical significance.

(c) Identified wetlands that have not been eliminated by threshold conditions shall be ranked for each of the adopted functional values. Evaluation shall be done using the Method for Comparative Evaluation of Nontidal Wetlands in New Hampshire (1991), or Method for the Evaluation and Inventory of Vegetated Tidal Marshes in New Hampshire (Coastal Method) (1993). If an alternative method is used the cited reference shall be identified and the reasons for using the alternative method shall be explained.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97

Wt 701.03 Selection of Evaluation Criteria.

(a) The municipality shall utilize ten of the following fourteen wetlands functions in their evaluation of the identified wetlands in designating the wetlands as prime:

- (1) Ecological integrity;
- (2) Wildlife habitat;
- (3) Finfish habitat;
- (4) Educational potential;
- (5) Visual/aesthetic quality;
- (6) Water based recreation;
- (7) Flood control potential;
- (8) Ground water use potential;

- (9) Sediment trapping;
- (10) Nutrient attenuation;
- (11) Shoreline anchoring and dissipation of erosive forces;
- (12) Urban quality of life potential;
- (13) Historical site potential; and
- (14) Noteworthiness.

(b) Up to three additional functions may be added if the municipality provides justification for these additions.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97

Wt 701.04 Selection of Designated Prime Wetlands.

(a) Selection of prime wetlands shall be based on the ranking of relative functional values described in Wt 701.02 and Wt 701.03 except as provided in (b) below.

(b) Prime wetlands designated by the municipality pursuant to RSA 482-A:15, II prior to July 1, 1993 may be based on the wetlands rules that were in effect on January 1, 1992 provided field evaluation of wetlands was initiated prior to January 1, 1992.

(c) In addition to their relative ranking, wetlands designated as prime shall meet the following minimum criteria:

- (1) The wetlands shall have the presence of hydric soils, hydrophytic vegetation, and wetlands hydrology; and
- (2) At least 50% of the prime wetland shall have hydric A soils and the remaining soils shall be hydric B soils.

(d) Designated prime wetlands boundaries shall be walked and verified by the municipality or its authorized agent where landowner permission can be obtained.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97

PART Wt 702 SUBMISSION

Wt 702.01 Report. The municipality, or its authorized agent, shall prepare a report which shall correlate each prime wetland by name or number to a map or maps, describe the methodology used, and present the specific evaluation data for each wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97

Wt 702.02 Map Format.

- (a) The map scale shall be such that 1" equals 1000 feet or less.
- (b) The map or maps shall delineate each prime wetland with an exterior outline defined to an accuracy of +/- 100 feet in location and property boundaries shall be shown.
- (c) The most accurate maps available to a municipality shall be utilized.
- (d) Map sheets submitted to the department shall not exceed a size of 28 inches by 40 inches and shall have a one-inch border and title block with scale and legend.
- (e) State coordinate reference points shall be marked on the map.
- (f) Maps shall contain clear identification of the prime wetlands.
- (g) Blue or black ink shall be used to identify prime wetlands perimeters.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 702.03 Acceptance. A review of the submission from each municipality shall be conducted by the department for compliance to the requirements of report and format. The department shall not act upon an application that is incomplete or fails to comply with the format or criteria set by the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 703 PERMIT PROCESS

Wt 703.01 Criteria for Approval.

(a) Applications filed for proposed projects shall be reviewed by the municipal conservation commission, if any, or the municipal planning board, if any, or the municipal executive body to determine if a proposed project is located in or contiguous to prime wetlands. It shall be the responsibility of the municipal board(s) to notify the bureau in writing that a proposed project involves prime wetlands. If this notification is not received within 14 days from filing date with the town/city clerk the department shall process the application under its regular procedures.

(b) Prior to approving an application for any project in or contiguous to a prime wetland, the applicant shall show, and the department shall find, as required under RSA 482-A:11, IV, based on clear and convincing evidence, that:

- (1) There will be no significant net loss of values set forth in RSA 482-A:1;
- (2) The project is consistent with the purpose specified in RSA 482-A:1;

- (3) The project could not be relocated to avoid impacts on prime wetlands without either reducing the public value of the project, or negatively affecting the public health or safety;
- (4) The project's impacts on prime wetlands are the minimum practical without either reducing the public value of the project, or negatively affecting the public health or safety; and
- (5) The project incorporates appropriate and practicable compensatory mitigation for each of the wetland functions and values of RSA 482-A:1, and each of the functions and values ranked by the municipality, that are impacted by the project. The mitigation proposed shall be appropriate in terms of matching the proposed benefit given the relative harm of the project. The mitigation shall be practicable given the technology available at the time of the application to the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97

New. #6498-B, eff 4-23-97

Wt 703.02 Criteria for Mitigation and Compensation.

- (a) Compensatory mitigation of lost or reduced wetland functions shall be within the physical boundaries of the project where possible and appropriate.
- (b) Off-site compensation of a wetland function, except mitigation for lost flood storage capacity, shall be considered if the applicant shows, and the department finds, that:
 - (1) The wetland function cannot be compensated on-site; or attempting to compensate on-site would have adverse affect on the value of other wetlands functions, the ecological value of adjacent environments, or the public health or safety; and
 - (2) The off-site compensation provides equal or greater value for that function than the value lost as a result of the proposed project.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 703.03 Public Hearing. A public hearing shall be held by the department prior to approval of an application for any project in or contiguous to a prime wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 703.04 Delineation of Prime Wetland. If the applicant contests the boundary of a prime wetland, or wishes a more precise delineation of that boundary at a project site than provided by Wt 702.02, the applicant may present data and evidence to the department and to the local conservation commission relative to the correct location of the boundary. In the event of a dispute, the final delineation shall be determined by the department based on the data and evidence submitted.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

PART Wt 704 NOTIFICATION PERMIT ISSUANCE AND APPEAL

Wt 704.01 Permit Issuance. No permit shall be issued until 28 calendar days after notification of the department's decision has been given to the municipal conservation commission, planning board, municipal executive body, applicant, and other interested parties who have entered written testimony or attended the public hearing.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

Wt 704.02 Appeal. Any party to a proceeding may request reconsideration within 28 calendar days after notification of a decision to approve or deny a project involving prime wetlands. An appeal shall include grounds for a rehearing or new relevant information that was not available to the department at the time of its decision.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97

CHAPTER Wt 800 COMPENSATORY MITIGATION

PART Wt 801 PURPOSE AND APPLICABILITY

Wt 801.01 Purpose. The purpose of this chapter is to establish the criteria and procedures for submittal and review of compensatory mitigation proposals, to compensate for the loss of wetland functions and values.

Source. #4352, eff 1-4-88; ss by #5762, eff 12-21-93; amd by #6219, eff 4-4-96; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97; repealed and moved by #7205, eff 2-24-00 (See Env-C 614 Administrative Fines)

New. #8062, eff 3-13-04

Wt 801.02 Applicability. This chapter shall apply to all compensatory mitigation proposals required by Wt 302.03.

Source. #8062, eff 3-13-04

PART Wt 802 DEFINITIONS

Wt 802.01 “Qualified Professional” means an individual with a combination of education and experience regarding identification and understanding of hydric soils, hydrophytic vegetation, and wetland hydrology, sufficient to enable the individual to evaluate wetland systems and to create the conditions necessary to sustain a wetland ecosystem.

Source. #8062, eff 3-13-04

PART Wt 803 COMPENSATORY MITIGATION REQUIREMENTS

Wt 803.01 Project Considerations. For a project that involves compensatory mitigation, the applicant shall submit a plan or a report, or both, prepared by a qualified professional, that identifies:

- (a) The size of the impact to the wetland;
- (b) The type(s) of wetland to be impacted;
- (c) The location of the mitigation site relative to other protected lands; and
- (d) Whether the mitigation site creates a buffer to provide wildlife habitat, aesthetic values, or water quality values along a jurisdictional area.

Source. #8062, eff 3-13-04

Wt 803.02 Assessments. Prior to submitting a compensatory mitigation proposal, the applicant shall submit a functional assessment, prepared by a qualified professional, of the impacted wetland site and proposed mitigation site(s) using:

- (a) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition; and

(b) Data on the surrounding area such as, but not limited to, land use, soils, habitat, and endangered species.

Source. #8062, eff 3-13-04

Wt 803.03 Compensatory Mitigation Site Location. Compensatory mitigation sites shall be located in the same watershed, as defined by Wt 101.97, as the impacted wetlands when available and practicable.

Source. #8062, eff 3-13-04

Wt 803.04 Compensation Amount.

(a) The applicant may propose a combination of compensatory mitigation types, listed in Table 800-1, to meet the requirements of this section.

(b) The department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.

Source. #8062, eff 3-13-04

Wt 803.05 Compensatory Mitigation Ratios. Except as provided in Wt 803.06, the applicant shall demonstrate that the compensatory mitigation plan meets or exceeds the ratios listed in Table 800-1, relative to the amount of impacted jurisdictional areas:

Table 800-1 Compensatory Mitigation Ratios

Resource Type	Creation	Restoration	Preservation of Upland Buffer
Bog	N/A	2:1	15:1
Tidal Wetlands	3:1	2:1	15:1
Forested	1.5:1	1.5:1	10:1
Undeveloped Tidal Buffer Zone	N/A	2:1	3:1
All Other Jurisdictional Areas	1.5:1	1:1	10:1

Source. #8062, eff 3-13-04

Wt 803.06 Alternative Compensatory Mitigation Plans.

(a) Compensatory mitigation shall meet or exceed the ratios listed in Table 800-1, unless the applicant proposes an alternative that will have greater benefit to water quality, wildlife and their habitat(s), or other functions and values of wetlands and surface waters identified in RSA 482-A:1 or to one or more of the following:

- (1) Exemplary natural communities as identified by the natural heritage bureau of the division of forests and lands in the department of resources and economic development;
- (2) Habitat that supports rare, threatened, or endangered species, or species of concern, as identified by the natural heritage bureau or the department of fish and game's nongame species program; or
- (3) Ecologically important lands as noted by the New Hampshire living legacy project or its successor for protection of biodiversity values of selected sites around the state.

(b) An alternative compensatory mitigation plan may include proposals such as the restoration of functions within a degraded wetland.

(c) An alternative compensatory mitigation plan shall meet all other requirements of Wt 800.

Source. #8062, eff 3-13-04

PART Wt 804 UPLAND BUFFER PRESERVATION

Wt 804.01 Location and Value. An upland buffer preservation area offered for compensatory mitigation shall:

(a) Be adjacent to a jurisdictional area that meets or exceeds the functional assessment of the wetland to be impacted by the project;

(b) Benefit the resource to be protected by maintaining water quality, wildlife habitat, or other functions and values of wetlands and surface waters; and

(c) Be consistent with the local and regional land use conservation goals.

Source. #8062, eff 3-13-04

Wt 804.02 Dimensions. The upland buffer shall be a minimum of 100 feet wide and contiguous with the protected resource(s).

Source. #8062, eff 3-13-04

Wt 804.03 Incorporated Jurisdictional Areas. An area subject to preservation may incorporate a jurisdictional area provided:

(a) The upland buffer entirely surrounds the jurisdictional area or at least abuts those undeveloped upland portions under sole ownership; and

(b) The incorporated jurisdictional area is equal to or less than 50% of the total conservation area.

Source. #8062, eff 3-13-04

Wt 804.04 Criteria for Evaluation of an Upland Buffer. To propose compensatory mitigation based on upland buffer preservation, the applicant shall:

(a) Submit a functional assessment of the jurisdictional area(s) to be impacted;

(b) Describe how the property proposed for preservation will be legally protected;

(c) Delineate all wetlands within the proposed conservation area and all contiguous wetlands and surface waters as follows:

(1) For conservation areas comprising 20 acres or more, delineation shall be completed:

a. By a certified wetland scientist in accordance with Wt 301.01; or

b. By interpretation of aerial photography, published soil surveys, U.S. Fish and Wildlife Service National Wetland Inventory maps, or other available information; and

(2) For conservation areas comprising less than 20 acres, delineation shall be completed by a certified wetland scientist in accordance with Wt 301.01;

- (d) Identify the property or portion of property on a tax map or USGS quad map;
- (e) Submit a plan identifying the boundaries of the conservation area;
- (f) Submit a draft legal description of the conservation area;
- (g) Submit the items required by Wt 501.02(a)(4);
- (h) Submit photographs to illustrate important site features with location(s) noted on a property map including location of:
 - (1) Significant ecological features;
 - (2) Existing buildings, structures, or trails;
 - (3) Wells;
 - (4) Power lines or pipelines;
 - (5) Historic resources or other improvements that will be in place at the establishment of the conservation area; and
- (i) Submit a plan for the stewardship of the property which identifies:
 - (1) Activities permitted and not permitted within the conservation area; and
 - (2) The responsible party or parties who will hold the easement and ensure that the stewardship plan is followed.

Source. #8062, eff 3-13-04

PART Wt 805 WETLAND CREATION OR WETLAND RESTORATION

Wt 805.01 Wetland Creation or Wetland Restoration. A compensatory mitigation proposal based on wetland creation or wetland restoration shall replace the types of wetlands to be impacted and the functions affected and shall include, where practicable, the provision for a contiguous upland buffer.

Source. #8062, eff 3-13-04

Wt 805.02 Criteria for Evaluation. To propose compensatory mitigation based on wetland creation or wetland restoration, the applicant shall:

- (a) Submit a functional assessment in accordance with Wt 803.02, of the impacted wetlands and the proposed mitigation site;
- (b) Have the wetland delineation prepared by a certified wetland scientist in accordance with Wt 301.01;
- (c) Identify the source of wetland hydrology for the proposed mitigation area;
- (d) Identify the relationship of the proposed mitigation site to any jurisdictional area(s);
- (e) For restoration proposals, explain the history of the filled or disturbed area, to the extent known;
- (f) Include plans that identify:

- (1) Existing and proposed grades, and critical or typical cross sections showing:
 - a. Existing and proposed grades;
 - b. Predicted water fluctuations; and
 - c. Proposed wetland cover types for the mitigation area;
 - (2) Construction procedures and timing as follows:
 - a. The name of the qualified professional responsible for oversight of the mitigation work;
 - b. The proposed contingency measures for unexpected issues; and
 - c. The timing and sequence of events;
 - (3) A planting proposal as follows:
 - a. Plant species and quantities;
 - b. Source of planting materials or whether the plan relies on natural re-vegetation;
 - c. Plant stock size and zones of predicted plant occurrence;
 - d. Plant survival goals;
 - e. The proposed locations of native plant stock and the rate and type of seeding; and
 - f. When and where seeding or planting will take place;
 - (4) Documentation of existing and proposed soils as follows:
 - a. The existing soils on the proposed mitigation site;
 - b. The source of soils to be placed on the site;
 - c. The likely seed bank composition of soils;
 - d. The depth of proposed growing medium; and
 - e. The soil properties such as texture and organic content;
 - (5) Erosion control notes and details to control sediment entering adjacent, undisturbed wetlands or surface waters;
 - (6) Invasive species in the vicinity;
 - (7) If applicable, an invasive species control plan; and
 - (8) Activities permitted and not permitted within the creation or restoration area;
- (g) Include a report describing how annual monitoring will be conducted following construction of the mitigation site(s), identifying the name of the qualified professional responsible for monitoring, proposed measures of success, and the remedial measures to be taken during construction and after completion of the project to promote success of the mitigation area; and

(h) Describe in the annual monitoring report that the hydrology of the mitigation site(s) is appropriate and the area has a 75% success rate of coverage of non-invasive hydrophytic vegetation after 3 full growing seasons following completion of the mitigation work or following additional remedial measures taken as identified in Wt 805.02(g).

Source. #8062, eff 3-13-04

PART Wt 806 REQUIREMENTS UPON PERMITTING

Wt 806.01 Notification of Construction Completion. Within 60 days of completing a mitigation project which included creation or restoration of wetlands, the applicant shall:

- (a) Submit a signed letter specifying the date of completion and the anticipated dates of submittal of the annual monitoring reports; and
- (b) Submit a post-construction monitoring report, documenting the conditions of the constructed or restored wetland.

Source. #8062, eff 3-13-04

Wt 806.02 Implementation of Remediation Plan.

(a) If an annual monitoring report shows the creation or restoration of the wetland to be unsuccessful, a remediation plan shall be submitted to the department.

(b) The remediation plan shall identify:

- (1) The problem(s) limiting the success of the mitigation site;
- (2) Measures which need to be taken to address the problem(s); and
- (3) A time schedule for corrective measures to take place.

(c) The department shall approve the proposed remediation plan if the department determines that the plan has a reasonable probability, within 3 full growing seasons following implementation of the remediation plan, of resolving the problem(s) that have caused the creation or restoration to be unsuccessful.

(d) Following department approval of the remediation plan, the applicant shall implement the plan and submit annual reports for 3 full growing seasons to demonstrate the success of the remedial measures.

Source. #8062, eff 3-13-04

Wt 806.03 Notification of Recorded Conservation Easement. Prior to commencing work on a project for which the mitigation plan requires preservation, the applicant shall:

- (a) Record the conservation easement, signed by the holder of the easement, for each parcel to be preserved with the registry of deeds for the county in which the parcel is located;
- (b) Submit a copy of each recorded document, signed by the easement holder, to the department; and
- (c) Submit a boundary plan within 60 days of approval, prepared by a licensed surveyor, and verification that the conservation area has been marked by permanent monuments and signs indicating the location of the area.

Source. #8062, eff 3-13-04

APPENDIX

RULE SECTION	STATUTE THE RULE INTENDS TO IMPLEMENT
Wt 101.03, 101.17, 101.18, 101.43, 101.51, 101.69, 101.70, 101.95 101.96, 101.97, 101.101, 101.102	RSA 482-A:3, I and RSA 482-A:11, II
Wt 101.30 & 101.70	RSA 482-A:3, IV
Wt 301.01(d), (e) & (f)	RSA 482-A:1 and 3 (excavating and dredging permit; certain exceptions)
Wt 302.03	RSA 482-A:3, I and RSA 482-A:11, II
Wt 303.02(o)	RSA 482-A:1 and 3
Wt 303.03(f)	RSA 482-A:1 and 3
Wt 303.04(d), (k), (v)-(x), (z)-(af)	RSA 482-A:1 and 3
Wt 303.05 intro. & (q)	RSA 482-A:3, IV
Wt 304.06(d)	RSA 482-A:1 and 3
Wt 304.11(g)	RSA 482-A:1 and 3
Wt 402.01-402.05	RSA 482-A:1 and 3
Wt 402.07(n)	RSA 482-A:3
Wt 402.19	RSA 228:57-a and RSA 482-A:11, II
Wt 501.02	RSA 482-A:1 and 3 (excavating and dredging permit; certain exceptions) RSA 482-A:3, I and RSA 482-A:11, II
Wt 506 and Wt 507	RSA 482-A:1 and 3
Wt 800	RSA 482-A:3, I and RSA 482-A:11, II